

EXHIBIT B

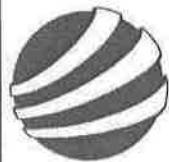
CONDENSED

In the Matter Of:
BISSONNETTE vs PODLASKI

1:15-CV-334-SLC

BENJAMIN SEVIER

January 06, 2017



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	Page 1	Page 3
1	Sevier	Sevier
2	UNITED STATES DISTRICT COURT	APPEARANCES
3	NORTHERN DISTRICT OF INDIANA, FORT WAYNE	
4	-----x	
5	MATTHEW BISSONNETTE,	
6	Plaintiff,	
7	v. Civil Action No. 1:15-CV-334-SLC	
8	KEVIN PODLASKI and CARSON BOXBERGER, LLP	
9	Defendants.	
10	-----x	
11	BENJAMIN PATRICK SEVIER	
12	New York, New York	
13	Friday, January 6, 2017	
14		
15		
16		
17		
18		
19		
20		
21	Reported by: Steven Neil Cohen, RPR	Attorney for Benjamin Sevier
22	Job No. J0498551	BY: CAROLYN K. FOLEY, ESQ.
23		YUKI A. HIROSE, ESQ.
24		
25		
	Page 2	Page 4
1	Sevier	Sevier
2	January 6, 2017	IT IS HEREBY STIPULATED AND
3	9:47 a.m.	AGREED, by and between counsel for the
4		respective parties hereto, that the sealing
5	Deposition of BENJAMIN PATRICK	and filing of the within deposition be
6	SEVIER, taken by Defendants, pursuant to	waived; that such deposition may be signed
7	notice, at the offices of Davis Wright	and sworn to before any officer authorized
8	Tremaine, LLP, 1251 Avenue of the Americas,	to administer an oath; that all objections,
9	New York, New York before Steven Neil Cohen,	except as to form are reserved to the time
10	a Registered Professional Reporter and	of trial.
11	Notary Public of the State of New York.	
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1	Sevier	1	Sevier
2	BENJAMIN PATRICK SEVIER, called as a	2	them marked as an exhibit.
3	witness by the Defendants, having been	3	MR. FURMAN: This will be
4	duly sworn, testified as follows:	4	Exhibit Number 108.
5	EXAMINATION	5	(Document Bates numbered PRH1
6	BY MR. FURMAN:	6	through 90 was marked Exhibit 108 for
7	Q. Mr. Sevier, good morning.	7	identification)
8	A. Good morning.	8	MR. FURMAN: These are, so I can
9	Q. Thank you for being here today.	9	identify them, they are listed as
10	But before we begin your counsel	10	Bates numbers PRH1 through 90.
11	would like to just make an understanding on	11	BY MR. FURMAN:
12	the record that we have agreed to off the	12	Q. Have you seen this before, this
13	record.	13	exhibit, these documents that are listed 1
14	MS. FOLEY: Just I want to state	14	through 90?
15	for the record my name is Carolyn	15	MS. FOLEY: You are asking if he
16	Foley, I work for Penguin Random House	16	has seen them as a package?
17	and I am appearing here on behalf and	17	MR. FURMAN: As a package.
18	representing the witness.	18	THE WITNESS: No.
19	The counsel have all agreed that	19	BY MR. FURMAN:
20	the transcript of this deposition will	20	Q. Okay. Did you participate in the
21	be used for purposes of this	21	gathering of documents that were related to
22	litigation only.	22	this litigation?
23	MR. FURMAN: That is agreed to	23	A. Yes.
24	by all parties; is that correct?	24	Q. Can you describe the manner in
25	MR. JOHNSTON: Yes.	25	which that took place?
Page 6		Page 8	
1	Sevier	1	Sevier
2	I am sorry. It is.	2	A. I made my computer available to my
3	BY MR. FURMAN:	3	attorneys.
4	Q. Mr. Sevier, good morning.	4	Q. Did you yourself do anything
5	We are here today in connection	5	beyond that, in other words, search for
6	with a litigation of Matthew Bissonnette	6	documents, search e-mails or search through
7	against Kevin Podlaski and others including	7	a file?
8	his law firm.	8	A. No.
9	Are you aware of that litigation?	9	Q. Before the documents were produced
10	A. Yes.	10	In this litigation and I will represent to
11	Q. We had sent a subpoena to you	11	you that these are the documents that were
12	through the Davis Wright Tremaine firm and	12	produced from Dutton in this litigation, did
13	you received a copy of that subpoena?	13	you --
14	MS. FOLEY: I will just state	14	MS. FOLEY: I am going to stop
15	for the record I have a copy -- I	15	you actually.
16	accepted service of that subpoena.	16	We did not produce these
17	BY MR. FURMAN:	17	documents in the course of this
18	Q. Okay. So you understand that you	18	litigation.
19	are here pursuant to a subpoena to give	19	I believe these documents were
20	testimony in relation to this particular	20	produced in the course of a previous
21	case?	21	litigation brought in New York.
22	A. Yes.	22	MR. FURMAN: When I say "this
23	Q. Okay. Now previously in this	23	litigation," I am speaking broadly of
24	litigation documents were produced from	24	the Bissonnette versus Podlaski, et
25	Dutton and I just want to show them and have	25	al. case which originated in New York

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<p>1 Sevier 2 and was restarted in Indiana so -- 3 MS. FOLEY: I guess the point is 4 we didn't produce these documents in 5 the course of this litigation. We 6 didn't make that production. 7 MR. FURMAN: Okay. And when I 8 say -- in the course of the New York 9 litigation were these documents 10 gathered and produced. 11 MS. FOLEY: Yes. 12 MR. FURMAN: That's correct. 13 BY MR. FURMAN: 14 Q. Okay. So Mr. Sevier, did you 15 participate in that, in that process in the 16 gathering of documents in the New York 17 litigation? 18 A. Yes. 19 Q. Have you seen them before? After 20 they were gathered and the e-mails were 21 taken off of your computer were they shown 22 to you? 23 A. Not in this, not as a packet, not 24 in total. I haven't seen this before. 25 MS. FOLEY: And actually may I</p>	<p>Page 9</p> <p>1 Sevier 2 whether they are from your files you 3 can answer. 4 If you don't know you can answer 5 you don't know. 6 You know, I will let the 7 witness -- the witness can answer the 8 question. 9 I think that it is probably best 10 for you and I to talk off the record 11 and maybe during a break if you want 12 to clarify something during lunch but 13 the witness made his files available 14 but I don't know that he is capable of 15 saying where any document came from. 16 It is probably best if we talk 17 about the production. 18 MR. FURMAN: Okay. The question 19 I am asking of the witness really 20 isn't all that complicated because the 21 entire production -- virtually the 22 entire production involves e-mails and 23 there are some letters that are 24 attached at the end so what I am 25 asking him to do is to come through</p>
<p>1 Sevier 2 just talk to the witness for one 3 minute? 4 MR. FURMAN: Sure. 5 Off the record. 6 (Discussion off the record) 7 MS. FOLEY: The witness is going 8 to add one more detail of his efforts 9 regarding production of documents. 10 BY MR. FURMAN: 11 Q. Okay. 12 A. I also made my physical files 13 available to my attorneys. 14 Q. Could you take a moment just to 15 thumb through these documents. The reason I 16 am asking you to do that is I want to make 17 sure that these documents were from your 18 file in the ordinary course of your business 19 at Dutton. It is for that purpose I am 20 asking you to thumb through 1 through 90. 21 MS. FOLEY: You want to ask if 22 they are all from his files? 23 MR. FURMAN: Correct. 24 MS. FOLEY: So if you can look 25 through them and if you can tell</p>	<p>Page 10</p> <p>1 Sevier 2 these e-mails and it is largely 3 repetitive and I just want to make 4 sure that they were e-mails that were 5 produced in the ordinary course of 6 Mr. Sevier's business. 7 MS. FOLEY: Here is the problem. 8 If you look at the -- if you look at 9 the first one the e-mail is from Alex 10 Gigante so while the documents were -- 11 we searched Mr. Sevier's documents for 12 sure, he was not the only person so 13 whether or not these were in his files 14 is hard to answer. They may or may 15 not have been. 16 MR. FURMAN: Right. 17 MS. FOLEY: So that is my 18 concern. He is not always the author 19 of all of these documents. 20 MR. FURMAN: Yes, I understand. 21 MS. HIROSE: Nor is he copied on 22 all of these. 23 MR. FURMAN: Right. Understood. 24 THE WITNESS: I have looked 25 through them.</p>

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1	Sevier	1	Sevier
2	Can you repeat the question?	2	Q. What years were you editor in
3	BY MR. FURMAN:	3	chief?
4	Q. Yes, the question is, now that you	4	A. From 2011 until 2000 and -- the
5	have had the opportunity to thumb through	5	end of 2014, beginning of 2015, somewhere in
6	these documents do they appear to you to be	6	there.
7	documents that are from Dutton and were	7	Q. During the time that No Easy Day
8	produced, these documents, e-mails, even the	8	was in production and through its release
9	ones that for example number 1 which is from	9	were you the editor in chief of Dutton?
10	Alex Gigante to Kevin Podlaski, are these	10	A. Yes.
11	documents in your mind in the ordinary	11	Q. Does Dutton go by a different name
12	course of Dutton's business?	12	or affiliation called Penguin?
13	A. Yes.	13	A. Dutton is a part of Penguin.
14	MS. FOLEY: Objection.	14	Q. Does Dutton have any affiliates --
15	Foundation.	15	let me ask -- strike that. Let me ask a
16	BY MR. FURMAN:	16	better question.
17	Q. We will get back to individual	17	What is the relationship between
18	questions about number 1. I just wanted to	18	Penguin and Dutton so I can understand how
19	ask that general question.	19	it is generally?
20	Let me ask you some questions	20	A. Dutton is one of perhaps a dozen
21	about your background and then we will come	21	imprints underneath the Penguin umbrella.
22	back to the documents.	22	Q. Is Dutton a separately comprised
23	How long have you been in the	23	organization, in other words, is it a
24	publishing industry?	24	subsidiary of Penguin or is Dutton a
25	A. About 18 years.	25	corporation on its own right?
1	Sevier	1	Sevier
2	Q. What is just a thumbnail sketch of	2	MS. FOLEY: Objection. Lack of
3	your educational background?	3	foundation.
4	A. I graduated with a Bachelor's	4	If you know you can answer.
5	Degree from UCLA.	5	THE WITNESS: I don't really
6	Q. Did you attend graduate school?	6	know.
7	A. No.	7	BY MR. FURMAN:
8	Q. How long have you been at Dutton?	8	Q. Did you work at St. Martin's Press
9	A. Ten years.	9	prior to working at Dutton?
10	Q. What is your current position?	10	A. Yes.
11	A. Vice president and publisher of	11	Q. How long did you work there?
12	Dutton.	12	A. Approx --
13	Q. How long have you had that	13	Q. You can give me an estimate.
14	position?	14	A. Approximately eight years.
15	A. I have been publisher for about	15	Q. Okay. What was your duties at
16	two years.	16	St. Martin's?
17	I have been vice president for	17	A. I was an editor.
18	about four years.	18	Q. Now, in the course of your career
19	Q. What other positions have you had	19	as an editor and that includes your time at
20	at Dutton?	20	St. Martin's have you ever had any kind of
21	A. I started ten years ago as a	21	security clearance from the U.S. Government?
22	senior editor and then I became an executive	22	A. No.
23	editor and then I became editor in chief and	23	Q. Do you know what that is?
24	then I became vice president and then I	24	A. Generally.
25	became vice president and publisher.	25	Q. Tell me in general what you

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<p>1 Sevier 2 believe that to be. 3 A. As far as I know it is a 4 designation from the government for 5 individuals who are given access to 6 different levels of information. That is 7 about all I know about it. 8 Q. Prior to No Easy Day have you been 9 involved either as an editor or in any way 10 in your employment through St. Martin's and 11 Dutton with a military author other than 12 obviously Mr. Bissonnette? 13 A. Can you repeat the question? 14 Q. Sure. Let me preface this. I am 15 going to use Mr. Bissonnette's real name and 16 the reason I am doing that in this 17 particular case is because he is the 18 plaintiff and has been named using his name. 19 I appreciate and understand that 20 when the book was written Mr. Bissonnette 21 was using a pen name, Mark Owen and so -- 22 and it is understood in this litigation 23 throughout that we have used 24 Mr. Bissonnette's name, it is not because we 25 are divulging anything that is not going to</p>	<p>1 Sevier 2 Are all of the names that you described, 3 Mr. Taylor, Mr. McCurley and Mr. Romeshea, 4 are those their actual names as opposed to 5 pen names? 6 A. Those are their actual names. 7 Q. Let's start with Mr. Taylor. What 8 kind of book was that? 9 A. Military thriller, fiction. 10 Q. Do you remember the name of the 11 book? 12 A. The first book we did together was 13 called One Rough Man. 14 Q. One Rough? 15 A. Man. 16 Q. Man. Okay. 17 Any other books? 18 A. We are about to publish his 11th 19 and I am afraid I am not going to remember 20 the titles of all 11. 21 Q. He has 11 books, right? 22 A. That's right. 23 Q. We don't need to go through the 24 history of 11 books but in the course of 25 being the editor for any one of those 11</p>
Page 18	Page 20
<p>1 Sevier 2 the public but I understand that when you 3 had worked on this, Mr. Bissonnette was 4 known as Mark Owen but I am going to use 5 that name so it is just easier for the 6 record that we use his name consistently 7 throughout. Other than -- so let me ask my 8 question. 9 Other than Mr. Bissonnette have 10 you in your career worked with other 11 military authors? 12 MS. FOLEY: By "military 13 authors," you mean people who worked 14 in the military? 15 MR. FURMAN: Yes, I do mean 16 that. 17 THE WITNESS: Yes. 18 BY MR. FURMAN: 19 Q. Who are they? 20 A. Brad Taylor, T. Mark McCurley, 21 Clinton Romeshea. That is who I can 22 remember. 23 Q. Let me start off with Brad Taylor. 24 Strike that. 25 Let me ask the first question.</p>	<p>1 Sevier 2 books did you discuss with Mr. Taylor the 3 need for obtaining any kind of security 4 clearance for his work? 5 MS. FOLEY: Objection to form. 6 THE WITNESS: I don't recall any 7 specific conversations. 8 BY MR. FURMAN: 9 Q. What was Mr. -- to the best of 10 your knowledge what was Mr. Taylor's 11 military background? 12 A. He was an army -- he was in the 13 army and at various points in his career he 14 was an Army Ranger and he was in the unit 15 commonly known as Delta Force. 16 Q. Are you aware of whether or not 17 Mr. Taylor was involved in any classified 18 missions during the course of his military 19 career? 20 MS. FOLEY: Objection. I mean, 21 I am going to direct the witness to 22 answer anything that is public 23 knowledge but going beyond that we are 24 here to talk about Mr. Bissonnette and 25 we are not here to talk about</p>

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1	Sevier	1	Sevier
2	confidential information that may have	2	A. Hunter Killer.
3	been shared between Mr. Sevier and his	3	Q. Did you discuss with Mr. McCurley
4	authors.	4	whether any of his experience that he was
5	So limiting your answer to what	5	relating in the book had to do with any kind
6	is public knowledge about him.	6	of classified information?
7	Repeat your question.	7	MS. FOLEY: I am going to object
8	MR. FURMAN: I don't know if I	8	to that question and I am going to
9	can accept your limitation because I	9	direct you to answer that to the
10	am asking the witness what he knows,	10	extent there was public knowledge of
11	not what is public.	11	whether or not he was involved in any
12	MS. FOLEY: I am just telling	12	classified -- what was your phrasing
13	you that is my direction to the	13	of it, classified?
14	witness. I take your point.	14	MR. FURMAN: I forgot.
15	We will take this one step at a	15	MS. FOLEY: Do you want to read
16	time.	16	back the question?
17	BY MR. FURMAN:	17	(Record read)
18	Q. So I want the record to be clear.	18	MS. FOLEY: So then the
19	If we need to raise this with the court, I	19	limitation is was there discussion
20	am asking you, Mr. Sevier, if you are aware	20	publicly that any of the material
21	of whether or not Mr. Taylor was involved in	21	related in the book had to do with
22	any classified missions in the course of his	22	classified information -- experiences
23	military career?	23	related in the book had to do with
24	MS. FOLEY: I am directing you	24	classified information.
25	to answer that to the extent that	25	THE WITNESS: I am sorry. I am
1	Sevier	1	Sevier
2	knowledge is public knowledge versus	2	completely confused. I will need
3	something that he has told you that is	3	somebody to repeat the question.
4	not publicly known about the author.	4	MR. FURMAN: I am distracted by
5	THE WITNESS: No.	5	the objections. I am going to have to
6	BY MR. FURMAN:	6	ask the reporter to read back the
7	Q. We will let the question stand and	7	question.
8	your limitation and if there is any issue	8	MS. FOLEY: Do you want to go
9	that we need to raise with the court we	9	off the record and let me discuss with
10	will.	10	the witness?
11	Let's move on to Mr. McCurley.	11	MR. FURMAN: Yes. I don't mind
12	What was Mr. McCurley's military background?	12	at all.
13	A. He was in the Air Force.	13	BY MR. FURMAN:
14	Q. Do you know what level he was in	14	Q. Mr. McCurley's book was
15	the Air Force? Was an officer?	15	nonfiction, correct?
16	A. He was an officer.	16	A. Yes.
17	Q. What kind of book did he write,	17	Q. Okay. And I think you mentioned
18	fiction, nonfiction?	18	it was called Hunter Killer.
19	A. Nonfiction.	19	To the best of your knowledge did
20	Q. How many books did he write?	20	that book involve any information that
21	A. One.	21	would -- was classified in any particular
22	Q. Do you remember the title of the	22	way by the U.S. Government?
23	book?	23	A. If you are asking whether the book
24	A. Yes.	24	we published contained any classified
25	Q. What was the title of that book?	25	information, my answer is, no.

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<p>1 Sevier</p> <p>2 Q. Did you make any effort in the</p> <p>3 course of editing the book that culminated</p> <p>4 in Hunter Killer to ascertain whether or not</p> <p>5 the book contained classified information?</p> <p>6 A. I had a conversation with the</p> <p>7 author prior to setting out to write the</p> <p>8 book -- his setting out to write the book</p> <p>9 and we agreed the book would contain no</p> <p>10 classified information and neither of us</p> <p>11 wanted it to contain any classified</p> <p>12 information and since I have no idea what is</p> <p>13 or is not classified, I said to him, it is</p> <p>14 your responsibility to make sure there is no</p> <p>15 classified information in this book.</p> <p>16 Q. Okay. So is it fair to say you</p> <p>17 relied on Mr. McCurley to carve out any</p> <p>18 classified information that would ultimately</p> <p>19 wind up in the book that was Hunter Killer?</p> <p>20 MS. FOLEY: Objection to the</p> <p>21 form. "Carve out any information that</p> <p>22 would ultimately end up in the book"</p> <p>23 sort of contradicts itself.</p> <p>24 BY MR. FURMAN:</p> <p>25 Q. Let me ask a better question then.</p>	<p>1 Sevier</p> <p>2 MR. FURMAN: His name is Clinton</p> <p>3 Romeshea.</p> <p>4 THE WITNESS: It is pronounced</p> <p>5 Romeshea and it is spelled</p> <p>6 R-O-M-E-S-H-E-A.</p> <p>7 MR. JOHNSTON: Thank you.</p> <p>8 BY MR. FURMAN:</p> <p>9 Q. When was that book published?</p> <p>10 A. Last year.</p> <p>11 Q. The book was published after No</p> <p>12 Easy Day?</p> <p>13 A. Yes.</p> <p>14 Q. What was Mr. Romeshea's highest</p> <p>15 position in the military to the best of your</p> <p>16 knowledge?</p> <p>17 A. I don't recall his specific rank</p> <p>18 but he was an enlisted army guy.</p> <p>19 Q. Was Red Platoon a firsthand</p> <p>20 account of the events that took place in</p> <p>21 Afghanistan that he wrote about?</p> <p>22 A. Yes.</p> <p>23 Q. Did you discuss -- well, I will</p> <p>24 not ask that question.</p> <p>25 Did you consider whether or not</p>
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<p>1 Sevier</p> <p>2 I will strike that.</p> <p>3 Did you rely on Mr. McCurley to</p> <p>4 avoid including any classified information</p> <p>5 in the book that culminated in Hunter</p> <p>6 Killer?</p> <p>7 A. Yes, I did.</p> <p>8 Q. When was that book published? You</p> <p>9 can just give me an estimate.</p> <p>10 A. A couple of years ago.</p> <p>11 Q. Clinton Romeshea, was it a fiction</p> <p>12 book or nonfiction book?</p> <p>13 A. Nonfiction.</p> <p>14 Q. Was that a first account story?</p> <p>15 A. I am not sure what you mean.</p> <p>16 Q. What was the name of the book?</p> <p>17 A. Red Platoon.</p> <p>18 Q. What generally was Red Platoon</p> <p>19 about?</p> <p>20 A. It was about the events at a</p> <p>21 military base on a particular day in</p> <p>22 Afghanistan during the war there.</p> <p>23 MR. JOHNSTON: I apologize for</p> <p>24 interrupting. I did not get the</p> <p>25 author's name.</p>	<p>1 Sevier</p> <p>2 classified information would be included in</p> <p>3 the book that became Red Platoon?</p> <p>4 MS. FOLEY: Object to the form</p> <p>5 of the question.</p> <p>6 THE WITNESS: I had the same</p> <p>7 conversation with him that I described</p> <p>8 earlier as having with Mr. McCurley.</p> <p>9 BY MR. FURMAN:</p> <p>10 Q. Beyond having the discussion with</p> <p>11 Mr. Romeshea did you take any efforts to</p> <p>12 make sure that no classified information</p> <p>13 would be released in the book Red Platoon?</p> <p>14 A. No. I relied on the author.</p> <p>15 Q. After Red Platoon was published</p> <p>16 did -- were you aware of whether or not any</p> <p>17 governmental agency inquired about the</p> <p>18 release of con -- classified information in</p> <p>19 the book Red Platoon?</p> <p>20 MS. FOLEY: Object to the form.</p> <p>21 THE WITNESS: I don't know of</p> <p>22 any.</p> <p>23 BY MR. FURMAN:</p> <p>24 Q. Do you know whether or not</p> <p>25 Mr. Romeshea had signed any nondisclosure</p>

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1	Sevier .		Sevier
2	agreements with the government?		2 A. Yes.
3	A. I don't know that.		3 Q. When did she first become involved
4	Q. Did you ask?		4 with the production of that book to the best
5	MS. FOLEY: If you remember.		5 of your knowledge?
6	THE WITNESS: I don't remember		6 A. She wasn't involved in what I
7	specifically whether or not I asked		7 would call the production of the book.
8	that question.		8 Q. When did she get involved in the
9	BY MR. FURMAN:		9 publicity and marketing of No Easy Day?
10	Q. Including Messrs. Taylor, McCurley		10 A. I couldn't give you a specific
11	and Romeshea and any other authors that you		11 date but it would have been -- it was
12	have been involved with in your career have		12 sometime in the first quarter of 2012.
13	any of those authors in your experience have		13 Q. Was it after the first draft the
14	signed nondisclosure agreements with the		14 book was produced?
15	government that you are aware of? Obviously		15 A. No.
16	Mr. Bissonnette has. You are aware of that.		16 Q. What efforts did she undertake to
17	I am asking any other authors.		17 publicize and market the book?
18	MS. FOLEY: Objection to the		18 MS. FOLEY: Object to the form.
19	form of the question.		19 THE WITNESS: She helped lay out
20	THE WITNESS: So you are asking		20 the publicity and marketing strategy
21	other than the three you just listed		21 and then it was her job to execute
22	or including the three --		22 that strategy.
23	BY MR. FURMAN:		23 She also participated in
24	Q. Including the three.		24 conversations about when the book
25	A. -- you just listed?		25 would be published inasmuch as that
1	Sevier		Sevier
2	Q. Yes.		2 was important to the media and
3	We know that Mr. Bissonnette had		3 publicity plan.
4	signed a nondisclosure agreement so I am		4 BY MR. FURMAN:
5	asking about any other author including		5 Q. Let me just follow up on that.
6	those three if you are aware that any of		6 First let me take on the media and publicity
7	them had signed a nondisclosure agreement of		7 strategy.
8	some sort with the U.S. Government?		8 When did she first lay out that
9	A. I have no specific knowledge of		9 that media and publicity strategy to the
10	what any of those three authors or any other		10 best of your knowledge? Obviously not a
11	that I can think of signed or didn't sign.		11 specific date but just generally.
12	Q. I am now going to just turn the		12 A. We began talking about it as I
13	topic to people that work at Dutton. I will		13 said in the first quarter, sometime in the
14	ask you some questions about them.		14 first quarter of 2012 and those discussions
15	Who is Christine Ball?		15 and strategies would have been a moving
16	A. She is the currently the deputy		16 target up to and in fact just after the
17	publisher for Putnam, Dutton and Berkeley		17 publication of the book in September.
18	which are three imprints of Penguin.		18 Q. Could you describe to me what that
19	Q. What involvement did Christine		19 strategy was initially?
20	Ball have with the book No Easy Day?		20 A. In the book business we want to
21	A. At that time she was the associate		21 get as much attention for a book as
22	publisher for Dutton in charge of publicity		22 possible. So with any book publication we
23	and marketing.		23 are looking to get our author in front of as
24	Q. Was Ms. Ball involved in the		24 many eyeballs in this country as possible
25	publicity and marketing of No Easy Day?		25 that means targeting the biggest possible

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Page 33	Page 35
1 Sevier	1 Sevier
2 television programs that do interviews with	2 MS. HIROSE: Objection. Do you
3 authors, the biggest print publications, the	3 mean the book?
4 radio stations and radio programs that can	4 BY MR. FURMAN:
5 reach lots of listeners so we with this	5 Q. No. I am talking about Matt.
6 project had our sights set on the absolute	6 A. I am not sure what you mean. Can
7 top outlets across all media.	7 you clarify?
8 Q. What was the hook as it relates to	8 Q. I am going to ask the court
9 Mr. Bissonnette? What was going to get	9 reporter to read back your answer. I was
10 eyeballs on him and the book itself?	10 following up on your answer.
11 A. He had a unique story to tell. He	11 (Record read)
12 is an American hero who had a long career	12 MR. FURMAN: What was my last
13 fighting for this country.	13 question?
14 He participated in one of the most	14 (Record read)
15 historic military operations that I can	15 THE WITNESS: Our hope was that
16 remember and he in this book was going to	16 those interviews would take place at
17 give a firsthand account of that mission and	17 publication on the day of our
18 that we felt was going to be something	18 publication and in the weeks and
19 everybody in the country would want to talk	19 months following.
20 to him about.	20 BY MR. FURMAN:
21 Q. What do you recall Christine Ball	21 Q. Was there a strategy to publicize
22 telling you about what the strategy would	22 the book before that date in place?
23 have been at least initially? You mentioned	23 A. No.
24 getting eyeballs.	24 Q. Did Dutton take any efforts to
25 A. Beyond what I just described?	25 publicize No Easy Day before the book was
1 Sevier	1 Sevier
2 Q. Beyond what you described.	2 actually published?
3 A. I am going to need you to be more	3 A. I don't know what you mean
4 specific.	4 exactly. If what you are asking is were we
5 Q. How -- what was the plan to	5 strategizing for a publicity plan that we
6 execute that vision of getting as many	6 hoped to start on the day of publication or
7 eyeballs on Mr. Bissonnette as possible?	7 around the day of publication and were we
8 MS. FOLEY: Object. Asked and	8 taking steps to enact and execute that
9 answered.	9 strategy, yes.
10 THE WITNESS: I feel like that	10 If you are asking whether we
11 is what I just said.	11 publicized the book or in other words caused
12 Do you want me to clarify or do	12 Matt to take any of the actions I described
13 you have a specific question?	13 in the media before the publication of the
14 BY MR. FURMAN:	14 book, then I have a different answer.
15 Q. Yes. You mentioned you wanted to	15 Q. What is the different answer then?
16 get eyeballs. How would you do that?	16 A. We were trying to set up
17 A. We would make Mark available --	17 interviews and in some cases the kind of
18 excuse me, Matt available to the media	18 media outlets I described earlier need time
19 outlets I just described and as many of them	19 to produce an interview, edit an interview
20 as possible to tell his story firsthand and	20 and get it together so that it can air,
21 make the public aware that the complete	21 i.e., become public around the time we
22 story was available in our book.	22 wanted it to which was at publication.
23 Q. When did that first take place,	23 So some steps were taken during
24 when was Matt first made available to the	24 the summer of 2012.
25 media outlets?	25 Q. What steps were -- what were those

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<p>1 Sevier 2 steps? 3 A. We spoke with one media outlet 4 that I can recall to make them aware that we 5 would be publishing this book and to offer 6 them an opportunity to interview Matt. 7 Q. What media outlet was that? 8 A. 60 Minutes, television show on 9 CBS. 10 Q. Did you describe the contents of 11 the book to 60 Minutes? 12 MS. FOLEY: Objection to form. 13 Were you part of the contact 14 with 60 Minutes? 15 THE WITNESS: Yes. 16 BY MR. FURMAN: 17 Q. I am assuming it was a producer at 18 60 Minutes that you spoke to? 19 A. It was a producer and an on air 20 interviewer. 21 Q. What were their names? 22 A. I don't recall the producer's 23 name. 24 The interviewer we met with was 25 named Scott Pelley.</p>	<p>Page 37</p> <p>1 Sevier 2 A. You book publishers trying to pick 3 an advantageous date when they think can get 4 the kind of media coverage that I described 5 earlier. 6 There are many other factors that 7 go into choosing a publication date 8 including when the manuscript is ready, how 9 long the production process takes, how many 10 copies you are shipping and how long it is 11 going to take to print and distribute the 12 book; numerous other factors that I can't 13 recall at the moment so all of those would 14 have gone into our thinking. 15 Q. What was your thinking as it relates 16 to No Easy Day about the publication date? 17 You described what you do generally? 18 A. Yes. 19 Q. Now I am talking about No Easy 20 Day. 21 A. Well, we wanted the book to be 22 published in the fall season because that is 23 the time when lots of people are buying 24 books. 70 percent of books I have heard are 25 sold in the U.S. during the fall season and</p>
<p>1 Sevier 2 Q. What did you tell them about the 3 book? 4 A. I don't recall specifically what I 5 told them. 6 Q. What generally was described in 7 that conversation? 8 A. That Matt's book was going to be 9 the first eyewitness account of the Osama 10 bin Laden raid. 11 Q. When did that conversation take 12 place? 13 A. I don't recall specifically. I 14 suspect it was in the early summer of 2012. 15 Q. Earlier you said that there was -- 16 that Christine Ball was involved in the 17 marketing, media and publicity strategizing 18 effort and also in discussions about when 19 the book would be published. Correct? 20 A. Yes. 21 Q. I want to focus on when the book 22 would be published. What was the strategy 23 in terms of that date? 24 A. Which date are you referring to? 25 Q. Publication of No Easy Day.</p>	<p>Page 38</p> <p>1 Sevier 2 it will lead up to Christmas. So we felt 3 this was a big book and we wanted it in the 4 biggest selling season. 5 September date that we initially 6 selected seemed advantageous from a media 7 publicity standpoint and from competition in 8 the marketplace as far as we could tell. 9 Q. Why? 10 A. You look at the publicly available 11 knowledge of what other books are being 12 published and we try to pick a date on which 13 there is not direct competition from a book 14 exactly like the one we are publishing or 15 another huge book that is going to suck up 16 the media attention that we are hoping to 17 get for our book. 18 Q. You were aware that another author 19 was planning a book about the operation 20 Neptune and the killing of bin Laden at the 21 same time, correct? 22 A. We knew there was a journalist 23 writing a journalist account. 24 Q. Mark Bowden? 25 A. Mark Bowden.</p>

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<p>1 Sevier 2 Q. You were aware that Mark Bowden 3 was shooting to publish a book in the fall, 4 correct? I have e-mails to that effect so I 5 think it is common knowledge. 6 MS. FOLEY: Object to the form. 7 And do you recall -- 8 THE WITNESS: I am trying to 9 remember if I knew when -- exactly 10 when that one was being published. I 11 don't really recall what we knew about 12 the pub date but I knew the book was 13 coming. 14 BY MR. FURMAN: 15 Q. Okay. And so the direct 16 competition that you described earlier was 17 Mark Bowden's book that ultimately became 18 the book called <i>The Finish</i>? 19 MS. FOLEY: Object to the form. 20 THE WITNESS: No. What I was 21 describing earlier was generally 22 speaking when you think you have the 23 biggest book of the year you don't 24 want to put it on sale on the same 25 date as another publisher's book that</p>	<p>Page 41</p> <p>1 Sevier 2 sales, the high season for book sales. 3 A. Right. 4 Q. Any other reason why September 5 would have been advantageous for you and the 6 author to publish the book in September? 7 A. We were trying to ensure that his 8 book would be the first eyewitness account 9 of the raid because that was a selling point 10 for us. 11 Q. If it was the first -- let me just 12 ask you about that answer. 13 If it was the first eyewitness 14 account, it had more value than it would 15 have had if it was a second or third or 16 fourth eyewitness account, fair to say? 17 A. Yes. It was the first book that 18 was an eyewitness account describing the 19 mission that we felt we would have a better 20 opportunity to get the kind of media 21 attention we described earlier, I described 22 earlier than if it had been, yes, a second, 23 third or fourth to use your words. 24 Q. The media attention has a 25 correlation with book sales, right? You get</p>
<p>1 Sevier 2 they think is going to be the biggest 3 book of the year so that is what I was 4 referring to earlier. 5 If you are asking me about Mark 6 Bowden, yes, I was aware that Bowden's 7 book was coming out, it was a 8 journalistic account based on 9 interviews. 10 It would have been advantageous 11 to us to be out in front of it if we 12 could be. 13 BY MR. FURMAN: 14 Q. Obviously it would have been 15 advantageous to be -- for <i>No Easy Day</i> to be 16 published before Mark Bowden's book <i>The</i> 17 <i>Finish</i>, fair to say? 18 A. I don't know that it was a 19 significant factor but it was in our 20 thinking. 21 Q. Anything else about the publishing 22 date that went into the strategy of 23 releasing the book in September? 24 You referenced being ahead of 25 competition and you also referenced the book</p>	<p>Page 42</p> <p>1 Sevier 2 media attention in order to drive book 3 sales, fair to say? 4 A. Generally speaking, yes. 5 Q. Okay. And is there any magic 6 about September other than what you 7 described in terms of releasing the book, 8 the fact that it is the high season and also 9 the need to be -- the first book that 10 describes the raid that culminated in the 11 killing of Bin Laden? 12 A. I can't think of any other magic 13 about September to use your words. 14 Q. I use the term "magic," you know, 15 not for any purpose other than drawing 16 attention to the month itself. 17 For example, September 11 is a 18 very sad anniversary but it is the 19 anniversary of the terrorist attack on the 20 Twin Towers in New York and the Pentagon and 21 also the deaths of hundreds of people on a 22 plane in Pennsylvania. 23 Was there any interest on the part 24 of Dutton to publish the book around the 25 time of September 11th in order to gain</p>

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<p style="text-align: right;">Page 45</p> <p>1 Sevier 2 media publicity? 3 A. That was not a significant factor 4 in our thinking. 5 Q. Was it a factor at all in your 6 thinking? 7 A. Ultimately we looked at various 8 publication dates for the book as we do with 9 any book and ultimately September 11th was 10 selected at the request of the author. 11 Q. Did you have one opinion -- I am 12 sorry. Strike. 13 Did you have an opinion one way or 14 another about the fact that the author 15 wanted the book published on September 11 of 16 2012, on the anniversary of the attack on 17 America? 18 A. Not particularly. What I can 19 remember is that I wanted the book to be out 20 in September if possible for the reasons I 21 described earlier. 22 Matt was most comfortable on 23 September 11 which happens to be a Tuesday 24 and books are always released on Tuesday and 25 only typically released on Tuesday for</p>	<p style="text-align: right;">Page 47</p> <p>1 Sevier 2 immediate run up to the election day because 3 the media tends to be very focused on the 4 election in the two to four weeks in a 5 typical election year before an election 6 we -- that would have been a factor in why 7 we scheduled the book earlier in the fall as 8 opposed to later in the fall and closer to 9 Christmas. 10 That is a generally accepted kind 11 of strategy in any election year from 12 publishers. 13 Q. Did you think that No Easy Day had 14 any political interest that would have 15 coincided with the election? 16 A. I don't remember that being a 17 significant factor in my mind. 18 Q. Let me go back to some -- I am 19 kind of shifting around and I appreciate 20 that you are following along with the 21 questions. 22 Who is Alex Gigante? 23 A. He was Penguin counsel, in-house 24 counsel at that time. 25 Q. Did he have any involvement with</p>
<p style="text-align: right;">Page 46</p> <p>1 Sevier 2 operations reasons so as I said it was not a 3 significant factor in my thinking. 4 Q. So in the fall of 2012 there was 5 the Presidential election too as you recall, 6 correct? 7 A. Yes. 8 Q. And unlike the one that we just 9 had, up at that point in time that was a 10 hotly contested Presidential election to the 11 best of your knowledge, correct? 12 A. Sure. I don't really remember 13 what -- yes, I remember the election. It 14 was hotly contested. Frankly after all we 15 have just been through in this country it 16 seems like a long time ago. 17 Q. Yes. That is why I prefaced the 18 question the way I did. 19 But if we could somehow forget 20 that 2016 happened, putting yourself back 21 into 2012 was there -- did the Presidential 22 election factor into the decision to publish 23 the book in September? 24 A. Inasmuch as in any election year 25 publishers tend to stay away from the</p>	<p style="text-align: right;">Page 48</p> <p>1 Sevier 2 No Easy Day? 3 A. Yes. 4 Q. Let me -- I just want to -- off 5 the record. 6 (Discussion off the record) 7 BY MR. FURMAN: 8 Q. I might have asked you this 9 question. I forgot the answer. If I asked 10 it already your lawyers can yell at me. 11 What was Mr. Gigante's role in the 12 book No Easy Day? 13 A. He was the in-house counsel for 14 Penguin at that time. 15 Q. Did he take any active 16 participation in the publication of No Easy 17 Day? 18 MS. FOLEY: I am going to object 19 at this point and I am going to direct 20 the witness not to reveal 21 conversations or information imparted 22 to him by counsel. 23 THE WITNESS: Can you repeat the 24 question? 25 MR. FURMAN: I will have it read</p>

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	Page 49		Page 51
1	Sevier	1	Sevier
2	back. I don't think I can remember	2	you are asking him what did
3	it.	3	Mr. Gigante tell him that he did.
4	(Record read)	4	MR. FURMAN: All right. So let
5	MS. FOLEY: If you can't answer	5	me try it a different way. I am not
6	that without revealing conversations	6	trying to obtain confidential
7	with your attorney that's your answer.	7	information.
8	THE WITNESS: Then, yes.	8	BY MR. FURMAN:
9	BY MR. FURMAN:	9	Q. Let me ask it a different way.
10	Q. He did take active participation?	10	Prior to the publication of No
11	MS. FOLEY: Are you saying you	11	Easy Day to the best of your knowledge did
12	can't answer it in response without	12	Dutton have any procedures in place to
13	revealing conversations with your	13	ensure that authors didn't violate
14	attorney?	14	nondisclosure agreements of any kind?
15	THE WITNESS: I am saying I	15	MS. FOLEY: Object to the form
16	can't answer it without talking --	16	of the question.
17	yes, I don't know that I can answer	17	I think you can ask him that
18	that question. We can talk about	18	question as far as what the editorial
19	that --	19	process was.
20	MS. FOLEY: Why don't I take a	20	MR. FURMAN: I am asking in his
21	minute? Go off the record.	21	role.
22	(Discussion off the record)	22	MS. FOLEY: In the editorial
23	MR. FURMAN: All right. We had	23	process --
24	a break.	24	MR. FURMAN: That is understood.
25	Do you want to add anything to	25	MS. FOLEY: Not consultation
	Page 50		Page 52
1	Sevier	1	Sevier
2	the record based on the conversation	2	with attorneys. And you are trying to
3	you just had with your client? Is	3	get -- you keep going into what did
4	there anything that needs to be	4	you ask your attorney.
5	clarified?	5	MR. FURMAN: No. I am not
6	MS. FOLEY: No. I mean do you	6	asking that. You have to forgive me.
7	want to -- is there an outstanding	7	I am pretty relaxed about
8	question pending?	8	conversations on the record. You have
9	MR. FURMAN: Yes.	9	seen that so far but I am taking a
10	Can I just have the last	10	deposition. I feel that now you may
11	question read back?	11	be intruding a bit.
12	(Record read)	12	MS. FOLEY: Well, no, I mean --
13	MS. FOLEY: I am directing the	13	MR. FURMAN: So what I am asking
14	witness in terms of attorney-client	14	because I am asking the questions is
15	privilege not to discuss conversations	15	that I am asking Mr. Sevier's
16	he had with his attorney, with	16	knowledge about whether Dutton has in
17	Dutton's attorney, about production of	17	place any procedures or policies to
18	the book.	18	ensure that authors don't violate
19	BY MR. FURMAN:	19	nondisclosure agreements. I am simply
20	Q. Okay. I would like to know what	20	asking that question.
21	you know about what Mr. Gigante did.	21	MS. FOLEY: I am directing the
22	MS. FOLEY: If Mr. Gigante told	22	witness it to answer that to the
23	him what he did that is going into	23	extent he can based on policies and
24	privileged information. That is the	24	procedures set up by the editorial
25	problem when you asked that question	25	group.

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	Page 53		Page 55
1	Sevier	1	Sevier
2	MR. FURMAN: Okay.	2	I had said to you if we want to talk
3	BY MR. FURMAN:	3	off the record let's do that.
4	Q. You can answer that question.	4	MR. FURMAN: I don't see the
5	A. No.	5	benefit of that.
6	Q. Did Dutton prior to the	6	What I am really would like to
7	publication of No Easy Day consult legal	7	do because we are here to do that is I
8	counsel, whether in-house or outside, in	8	would like to ask questions that
9	connection with the publication of a	9	relate to this case and move on. So I
10	military book to ensure that there were no	10	like to try to do that.
11	violations of nondisclosure agreements?	11	I appreciate your role and your
12	MS. FOLEY: I am going to	12	concerns and I -- so I would say that
13	object. That calls for privileged	13	in -- with respectful of that, of your
14	information.	14	role.
15	I am going to direct the witness	15	BY MR. FURMAN:
16	not to answer that question.	16	Q. Did Dutton retain outside legal
17	MR. FURMAN: I am not asking for	17	counsel in connection with the publication
18	privileged information. I am asking	18	of No Easy Day?
19	if they consulted.	19	MS. FOLEY: I am going to object
20	MS. FOLEY: On the topic.	20	and direct the witness not to answer.
21	MR. FURMAN: On the topic.	21	BY MR. FURMAN:
22	MS. FOLEY: You have asked a	22	Q. Did you obtain legal advice, I
23	specific to make sure that it doesn't	23	don't want to know what that advice was, did
24	contain classified information if I	24	Dutton obtain legal advice with respect to
25	heard the question so you have gone	25	the publication of No Easy Day?
	Page 54		
1	Sevier	1	Sevier
2	into the contents of the	2	MS. FOLEY: You can answer that
3	communication.	3	question.
4	MR. FURMAN: I really have to	4	THE WITNESS: Yes.
5	respectfully disagree with what you	5	BY MR. FURMAN:
6	are saying. I am not asking for the	6	Q. Okay. From where?
7	conversation. I am asking whether or	7	MS. FOLEY: To the extent you
8	not --	8	know you can answer that question.
9	MS. FOLEY: You are asking the	9	THE WITNESS: From our in-house
10	topic of the conversation.	10	legal counsel.
11	And I am going to direct the	11	BY MR. FURMAN:
12	witness not to answer and maybe to	12	Q. Mr. Gigante?
13	avoid conversations on the record you	13	A. Yes.
14	and I can talk about this later.	14	Q. Did you consider, you, not asking
15	MR. FURMAN: Yes. I mean I --	15	whether you discussed it with anyone else,
16	let's do this because I am -- you	16	did you consider whether or not you needed
17	know, I am mindful of the time that I	17	security clearance in order to discuss the
18	have to take this deposition and	18	contents of the book No Easy Day?
19	speaking objections just generally are	19	A. No.
20	not permissible. You can object. You	20	Q. Did you discuss that with anyone?
21	can direct the witness not to answer	21	A. No.
22	and then we will mark it for a ruling.	22	MS. FOLEY: Excluding counsel.
23	I think that is the probably the best	23	BY MR. FURMAN:
24	way to do it.	24	Q. In connection with any book
25	MS. FOLEY: I agree. I agree.	25	including Red Platoon or any other military

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<p style="text-align: right;">Page 57</p> <p>1 Sevier 2 book, did any book that you work on ever go 3 through a prepublication review process with 4 the U.S. Government? 5 A. Yes. 6 Q. Which books? 7 A. The second book by Mark Owen which 8 is the pen name for Matt Bissonnette as you 9 know, pseudonym for Matt, went through a 10 legal -- security review. 11 And Hunter Killer by T. Mark 12 McCurley went through a security review. 13 Q. Hunter Killer, that was published 14 after No Easy Day? 15 A. That's right. 16 Q. Who assisted you if anyone in -- 17 let me take it back. 18 Who assisted the author to the 19 best of your knowledge with the 20 prepublication review process for Hunter 21 Killer? 22 MS. FOLEY: To the extent you 23 know. 24 THE WITNESS: He had an attorney 25 and that is -- as far as I know that</p>	<p style="text-align: right;">Page 59</p> <p>1 Sevier 2 Q. When did you first consider that 3 question? 4 A. From the beginning. The moment I 5 heard about the possibility of the book from 6 the literary agent. 7 Q. I want to follow through on that 8 but I want to go chronologically on that. 9 When did you first learn about the 10 book No Easy Day or the idea of the book 11 that became No Easy Day? 12 A. I think it was late November of 13 2011. 14 Q. How did you first learn about it? 15 A. I received a phone call from a 16 literary agent named Elise Cheney. 17 Q. Did you know Elise Cheney before 18 she contacted you? 19 A. Yes, I did. 20 Q. How? 21 A. She is a literary agent and I am 22 an editor and publisher so I bought books 23 from her in the past. We had done business 24 together. 25 Q. How did she contact you?</p>
<p style="text-align: right;">Page 58</p> <p>1 Sevier 2 is my answer. That is all I can 3 remember. 4 BY MR. FURMAN: 5 Q. We used the term "prepublication 6 review process," and I want to understand 7 what your knowledge of that is. What do you 8 understand that to be? 9 A. It can mean different things for 10 different authors. It has to do with where 11 they served, if we are talking about a 12 military author or someone who has worked 13 for any sensitive branch of the U.S. 14 Government. Generic term security review 15 the way I heard it used typically can mean 16 any one of a number of government agencies 17 who review manuscripts before publication 18 for the former employees. 19 Q. In connection with the book No 20 Easy Day did you separate and apart from any 21 conversation you had with anyone else, just 22 want to know what you thought, did you 23 consider whether the book needed to go 24 through a prepublication review process? 25 A. Yes. I considered the question.</p>	<p style="text-align: right;">Page 60</p> <p>1 Sevier 2 A. I believe she called me. 3 Q. What did she tell you when she 4 called you? 5 A. I don't remember her specific 6 words but generally she said she had met 7 with one of the Navy SEALs who had been on 8 the bin Laden raid and he was considering 9 writing a book about it and did I think that 10 was a good idea she asked me. 11 Q. What did you respond? 12 A. I said I think that would be a big 13 book. 14 Q. Anything else about the 15 conversation that you recall? 16 A. Not really. 17 Q. Did you set up any meetings or any 18 other action points after that discussion? 19 A. I am sure I said I would call her 20 back, that I was very interested in the -- 21 talking further about that book. 22 Q. Is that your entire recollection 23 of the conversation? 24 A. Yes. Yes. 25 Q. What was the next time you spoke</p>

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Page 61	Page 63
1 Sevier	1 Sevier
2 to Elise Cheney about this topic?	2 A. She called to -- because she had
3 A. I don't remember specifically but	3 heard -- can we step out about this briefly?
4 it was very soon after. It could have been	4 Q. No.
5 the same day, it could have been the next	5 A. It is a privileged question, I
6 day.	6 think. I actually don't know.
7 Q. You contacted her?	7 MS. FOLEY: He wants to consult
8 A. Yes.	8 for privilege. We will consult
9 Q. In what form, call, text, e-mail?	9 briefly.
10 A. I don't remember.	10 THE WITNESS: It will take 30
11 Q. Would you text message with her at	11 seconds.
12 all? Did you have her phone number and text	12 BY MR. FURMAN:
13 message with her?	13 Q. I think I need to know a little
14 A. No. I would not have done that	14 bit more about what you are saying and why
15 day, I would not have texted her.	15 you are here and --
16 Q. Okay. To this day do you have her	16 A. I think I can do it.
17 phone number and text message with her?	17 She had a -- she called with a
18 A. I have her phone number. I can't	18 question for me about the -- about this
19 recall if I have ever text messaged with	19 testimony and the status -- what I would
20 her.	20 be -- how I would be called here, what the
21 Q. You obviously e-mailed with her	21 label.
22 over the course of time?	22 MS. FOLEY: What you recall?
23 A. Yes.	23 THE WITNESS: What I would be
24 Q. Just going back to the present	24 called as I was testifying.
25 time when was the last time you spoke to	25
1 Sevier	1 Sevier
2 Ms. Cheney?	2 BY MR. FURMAN:
3 A. Sometime in the fall of last year.	3 Q. Let me just say that your
4 Q. You haven't spoken to Elise Cheney	4 conversation with Elise Cheney, she is not a
5 from the fall of last year up until the	5 lawyer, is she?
6 present time?	6 A. Not to my knowledge.
7 A. No. I mean that is the last two	7 Q. So and you are not a lawyer I take
8 weeks. I haven't spoken to her in 2017.	8 it?
9 I didn't speak to her while I was	9 A. No.
10 on Christmas break for the last two weeks of	10 Q. So I will be asking you questions
11 December. So sometime before December 16th	11 about your conversations with Elise Cheney.
12 of last year.	12 A. Yes.
13 Q. Did you talk about -- about this	13 Q. What in that discussion in the
14 case with her?	14 fall of 2016 about this case, can you tell
15 A. In our last conversation?	15 me what that conversation was?
16 Q. Sure.	16 A. She wanted -- she had heard
17 A. No.	17 that -- really don't know how to answer this
18 Q. When was the last time you spoke	18 without talking about a conversation I had
19 to her about this case. When I say "this	19 with my attorney but I will try.
20 case," Matthew Bissonnette's lawsuit against	20 MS. FOLEY: Stick to
21 lawyers, that includes the New York case and	21 information.
22 this case in Indiana?	22 BY MR. FURMAN:
23 A. It may have come up briefly at	23 Q. What she said is not privileged.
24 some point in the second half of last year.	24 A. She said you should be appearing
25 Q. What did you discuss?	25 as an expert witness at this deposition and

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Page 65	Page 67
<p>1 Sevier 2 I don't understand why you are not. 3 Q. Did she explain why you should be 4 an expert witness in this case? 5 A. Not really. I didn't particularly 6 understand the term even and I am not sure 7 she did.</p> <p>8 Q. What would you be testifying as an 9 expert in?</p> <p>10 A. I don't know.</p> <p>11 Q. When was the last time -- let me 12 go back in time. I will ask a general 13 question.</p> <p>14 It is fair to say you had several 15 conversations with Elise Cheney about this 16 case over the past several years?</p> <p>17 A. Yes. That is fair to say.</p> <p>18 Q. Have you spoken to anyone from 19 Mr. Johnston's law firm about this case?</p> <p>20 A. Yes.</p> <p>21 Q. When was the last time you had a 22 discussion with Mr. Johnston's law firm?</p> <p>23 A. Yesterday.</p> <p>24 Q. Was it in person, on the phone, 25 how did that take place?</p>	<p>1 Sevier 2 guys talked to these guys. 3 Q. What do you recall Mr. Johnston 4 telling you or saying out loud? 5 A. He talked about his style in the 6 deposition, a little bit about his 7 impressions of what your style were. 8 Q. What did he say? I am so curious. 9 A. About you, is that what you were 10 asking? 11 Q. I hope he said I am a nice guy. 12 A. He did. He said he is a polite 13 guy, he is not a fist pounder. 14 MS. FOLEY: He said he is good 15 looking. 16 MR. FURMAN: I appreciate that. 17 There is only one good looking 18 guy here. That is this guy right 19 here. 20 Thank you. Gees, I am 21 flattered. Thank you for putting it 22 on the record. 23 BY MR. FURMAN: 24 Q. Other than Mr. Johnston's 25 blindness, was there anything else that he</p>
Page 66	Page 68
<p>1 Sevier 2 A. I met Mr. Johnston for the first 3 time yesterday. 4 Q. Before you met with Mr. Johnston 5 had you spoken to him on the phone? 6 A. Not that I can recall. 7 Q. Had you spoken to him prior to 8 yesterday? Did I just ask that question? 9 A. Yesterday was the first time I can 10 recall speaking to him in person or on the 11 phone. 12 Q. What did you discuss? 13 A. We said hello, nice to meet you. 14 We discussed generally what to expect today 15 in terms of how a deposition works. Things 16 like that. 17 Q. Is that -- how long did that 18 conversation take place? 19 A. We were together for half an hour 20 maybe. 21 Q. So in that half an hour what did 22 you discuss because you just related 20 23 seconds of the conversation to me? 24 A. To be honest I didn't say much. I 25 sat in a room and had a sandwich and these</p>	<p>1 Sevier 2 discussed about the case? 3 A. Not that I can recall 4 particularly. At least not directed to me. 5 Q. If you can just tell me a rough 6 number because I would imagine it would be a 7 numerous conversation, how many 8 conversations have you had with Liz Cheney 9 about the lawsuit that Matthew Bissonnette 10 has against his lawyers? 11 A. It is hard to put a number on 12 that. If I had to guess I would say a 13 dozen. It has come up in maybe a dozen 14 conversations over the last few years. 15 Q. So in dozens of conversations 16 in -- I take it that they were at least 10 17 or 15 minutes long conversations? I am 18 trying to get a sense of it. 19 A. I don't remember how long the 20 conversations were. I just want to clarify, 21 I said about a dozen. 22 Q. So I am wrong. I appreciate your 23 correction. 24 In the dozen or so conversations 25 what do you recall about them, what was the</p>

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1 Sevier 2 conversation about? 3 A. Just the general idea that Matt 4 felt he had gotten bad legal advice and he 5 was going to kind of sue his attorney, sort 6 of general, that is frankly what she was 7 mostly talking about. 8 She expressed a fair amount of 9 outrage over the last few years about the 10 advice that Matt had gotten from his 11 attorney, Podlaski, on those calls. I can't 12 be more specific than that. 13 Q. Fair to say that Ms. Cheney has a 14 view that Matthew Bissonnette was wronged in 15 some manner by my client? 16 A. She expressed to me that she feels 17 he got -- Matt got bad legal advice from 18 Podlaski. 19 Q. Okay. And what was your response 20 to that? 21 A. To Elise on those phone calls? 22 Q. Right. 23 A. I can't really recall. General 24 support probably. 25 Q. Do you have an opinion one way or	1 Sevier 2 obviously not a lawyer. 3 Do you have an opinion one way or 4 the other about Mr. Podlaski's advice to and 5 his legal work on behalf of Mr. Bissonnette? 6 MS. FOLEY: Objection. Again, 7 lacks foundation. 8 THE WITNESS: Well, yes. Given 9 that Podlaski was Mark's adviser -- 10 Matt's adviser and he got to a 11 point -- Matt got to a point where he 12 had to sign away all the proceeds of 13 his book it sounds like he got bad 14 advice. 15 BY MR. FURMAN: 16 Q. Beyond that, beyond what you just 17 described do you have any other opinion 18 about Mr. Podlaski and his representation of 19 Mr. Bissonnette? 20 A. Any other opinion? Not that comes 21 to mind. If you want to be more specific. 22 Q. It doesn't have to be opinion, any 23 thoughts, any observations? 24 A. No. 25 Q. The reason I am asking that is
Page 70	Page 72
1 Sevier 2 another about the legal advice that 3 Mr. Bissonnette got in particular to the 4 publication of No Easy Day? 5 MS. FOLEY: Object to form. 6 Lacks foundation. 7 THE WITNESS: I am not a legal 8 expert. I don't know with all the 9 phone calls and conversations they had 10 so I don't really know how to answer 11 that. 12 BY MR. FURMAN: 13 Q. So you obviously were not in an 14 attorney-client relationship with 15 Mr. Podlaski, correct? 16 A. I think that is right. This is 17 the first time I have done this and I don't 18 understand privilege. 19 Q. There is a first time for 20 everything but it is not the first time you 21 are answering questions. If you are married 22 you have answered questions. 23 The question I am asking you is do 24 you have an opinion one way or another, I am 25 not asking for a legal opinion. You are	1 Sevier 2 because it is a deposition and there may be 3 a trial and what I would like to know at 4 trial if you have any views one way or the 5 other about the legal services that were 6 provided by Mr. Podlaski so I don't want to 7 be surprised at trial so I want to ask you 8 if you have any? 9 A. Yes. As I said I think he was 10 supposed to steer Matt through this process 11 in a way that would avoid the kind of 12 problems that Matt ultimately ran into and 13 that we all had to deal with around 14 publication of this book and given the way 15 it has gone for Matt over the last few years 16 I think Podlaski screwed up. 17 Q. Can you tell me how you believe 18 "Mr. Podlaski screwed up" as you describe? 19 MS. FOLEY: Object to the form 20 of the question. 21 THE WITNESS: Matt asked him 22 whether he had to submit the 23 manuscript for security review and 24 Podlaski's advice was that no, he did 25 not. That seems to not having been

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<p>1 Sevier 2 correct and that got Matt in a fair 3 amount of hot water. 4 BY MR. FURMAN: 5 Q. Is there anything else? 6 A. Not that comes to mind. 7 Q. Do you know one way or the other 8 whether Matt asked Mr. Podlaski if he had to 9 submit the book for prepublication review? 10 A. Yes. He asked him. 11 Q. How do you know that? 12 A. Matt told me. 13 Q. Other than Matt telling you do you 14 have any other knowledge about that? 15 A. It was a part of all the 16 conversations that we were having with Matt 17 around the planning of the publication of 18 the book so it was a topic we covered more 19 than once but -- and I guess that is my 20 answer. 21 Q. Did you ever ask Mr. Podlaski 22 whether the book needed to be submitted for 23 a prepublication review? 24 A. Did I ever ask him directly? I 25 don't remember. I can't recall</p>	<p>1 Sevier 2 Q. Verbally you had an arrangement of 3 some sort, you made an offer, she made a 4 counteroffer? 5 A. And then we made an agreement. 6 Q. What was -- tell me what the 7 numbers were and what the terms were. 8 A. My memory is that my first offer 9 was \$800,000 for world rights which means 10 the ability to publish the book in all 11 languages all over the world. 12 Her response was certainly that 13 the first offer was not sufficient to secure 14 the rights. 15 I honestly can't remember if she 16 put a number on what would be sufficient or 17 if I just came back with a better offer but 18 the second offer was a million dollars for 19 the world rights to publish the book which 20 she and Matt accepted. 21 Q. When did that million dollar offer 22 and acceptance take place generally? 23 A. Generally it was within a couple 24 days of that phone call, that first phone 25 call.</p>
<p>1 Sevier 2 specifically. It is possible. 3 Q. Let's go back in time to November 4 of 2011. 5 A. Okay. 6 Q. You got a call from Elise Cheney. 7 She tells you about Mark Owen. I take it 8 you didn't know who Matt Bissonnette was at 9 the time? 10 A. We didn't talk about any names 11 there including Matt Bissonnette. 12 Q. You said you called either that 13 day or shortly after you called Elise Cheney 14 back. What happened next? 15 A. I made an offer for the rights to 16 publish the book at some point. I can't say 17 on which phone call that happened except I 18 know it wasn't the first phone call we had 19 and we negotiated a little bit, she made a 20 counteroffer I think or at least she told me 21 that my first offer was not sufficient so I 22 made another offer, we made an agreement. 23 Q. Was that agreement formulated in 24 writing? 25 A. Ultimately in a contract.</p>	<p>1 Sevier 2 Q. So it was before or after 3 Thanksgiving of 2011? 4 A. I can't recall. My memory is it 5 was after but I can't be certain of that. 6 Q. Was it in December of 2011? 7 A. Again I can't be certain that it 8 wasn't the first week of December. 9 Q. Was the offer and acceptance in 10 exchange by e-mail or correspondence or 11 anything that was documented? 12 A. I can't recall. 13 Q. Did you take notes on that? 14 A. I can't recall. 15 Q. How do you know it was a million 16 dollars? 17 A. Because I remember what I pay for 18 books typically. 19 Q. How do you know the first offer 20 was \$800,000? 21 A. Because again I remember 22 especially when we are talking about a 23 significant investment like this it is part 24 of my general business practice to remember 25 these things.</p>

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Page 77	Page 79
1 Sevier	1 Sevier
2 Q. Do you formalize or document	2 line of questioning or at a breaking
3 offers that are made?	3 point I would like a comfort break.
4 A. Sometimes.	4 MR. FURMAN: Of course. Do you
5 Q. Did you in this case?	5 want to do it now?
6 A. I can't recall.	6 MS. FOLEY: Sure. I don't want
7 Q. If before you make an offer do you	7 to interrupt your line.
8 have to get authority from someone at Dutton	8 MR. FURMAN: No. No.
9 to make that kind of substantial financial	9 MS. FOLEY: Okay.
10 offer?	10 MR. FURMAN: I am easily
11 A. Yes.	11 interrupted as you know. Let's take a
12 Q. What information did you have	12 break.
13 about No Easy Day that -- at the time you	13 (Recess)
14 made the offer?	14 MR. FURMAN: I forget the last
15 A. Essentially what I said earlier,	15 question.
16 that there was a former Navy Seal who had	16 (Record read)
17 been on the raid to -- that killed bin Laden	17 BY MR. FURMAN:
18 and he was going to write a first person	18 Q. When did that meeting with
19 account of the raid.	19 Mr. Bissonnette take place?
20 Q. This was a verbal communication to	20 A. It was sometime in the last week
21 you from Elise Cheney?	21 or two before the Christmas break of 2011.
22 A. Yes.	22 Q. So it was in the first half of the
23 Q. Did you do any due diligence to	23 month?
24 verify that this is accurate?	24 A. First three weeks. I really can't
25 A. At any time?	25 remember exactly.
Page 78	Page 80
1 Sevier	1 Sevier
2 Q. At the time that you made an offer	2 Q. Before December 25th?
3 of \$800,000 this could have been a quack off	3 A. Yes. Before Christmas.
4 the street, right?	4 Q. Where did the meeting take place?
5 A. Believe me, I thought of that, but	5 A. At the Penguin offices.
6 no, I accepted Elise at her word.	6 Q. Who was at the meeting?
7 Q. So based on a working relationship	7 A. Matt and Elise came in and Matt
8 with Elise Cheney that you believe that this	8 first with me in my office and then I
9 was a legitimate person claiming that he was	9 introduced Matt to my publisher, Brian Tart
10 on the raid?	10 and to our associate publisher Christine
11 A. Exactly, yes. Elise and I had a	11 Ball and we had a conversation in Brian's
12 long history together and I believed she was	12 office and then they left.
13 telling me the truth.	13 Q. How long did the meetings with
14 Q. Was the offer contingent on any	14 Mr. Bissonnette take place from start to
15 kind of verification of the author's bona	15 finish?
16 fides?	16 A. My estimate would be two hours,
17 A. I can't recall whether I would	17 maybe less.
18 have communicated any contingencies in this	18 Q. What was discussed during those
19 specific case but I know that I wanted to	19 two hours?
20 meet Matt and that that meeting would likely	20 A. General introductions, what to
21 take place before any contract was	21 expect from the publication process, sort of
22 formalized and signed and in fact the	22 educating Matt on what a book publication
23 meeting did take place before the contract	23 looks like and how it would work, who we
24 so that was the bona fides essentially.	24 were, what we were planning to do a little
25 MS. FOLEY: When you finish this	25 bit.

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1 Sevier	1 Sevier
2 Matt telling his story who he was,	2 (Record read)
3 what he wanted to write about, et cetera.	3 THE WITNESS: No. I didn't have
4 Q. What did Matt tell you what he	4 any concern about that.
5 wanted to write about?	5 BY MR. FURMAN:
6 A. He told us -- he told me that he	6 Q. I am going to use the term
7 wanted to write the true story of what	7 Operation Neptune Spear because I just don't
8 happened on the bin Laden raid from the	8 like using that terrorist's name. Is that
9 point of view of the guys on the ground.	9 okay?
10 Q. Did he tell you why he wanted to	10 A. Fine with me.
11 tell the "true story"?	11 Q. Did you have any discussion with
12 A. I think he mentioned in that	12 Mr. Bissonnette at this meeting in December
13 meeting that he was frustrated, some of	13 of 2011 about nondisclosure agreements that
14 those guys were frustrated that the -- I	14 he may have signed?
15 don't remember how he characterized it	15 A. I don't recall if it came up in
16 exactly but I remember it being like the	16 those meetings.
17 politicians and the President and the	17 Q. Did you have any discussion with
18 commanders who didn't put themselves at risk	18 him about the CIA's involvement in Operation
19 were the ones who were telling the story and	19 Neptune Spear?
20 that bugged a lot of the guys and so he	20 A. I don't remember if that came up
21 wanted to tell it from his point of view and	21 in the meeting -- in those meetings.
22 their point of view.	22 Q. Did you have a discussion with
23 Q. Did Mr. Bissonnette say that it	23 Mr. Bissonnette about Catherine Bigelow and
24 frustrated or as you described bugged him	24 Mark Boal, B-O-A-L?
25 that politicians, the President, others were	25 A. At that meeting?
1 Sevier	1 Sevier
2 taking credit for the raid on -- that	2 Q. Yes.
3 culminated the killing of bin Laden?	3 A. I do not recall talking to them
4 A. Yes. Right. Yes. That is what I	4 about either of those people.
5 am saying. Yes.	5 Q. There came point in time when you
6 Q. Was it that -- did he express that	6 did discuss with Mr. Bissonnette Catherine
7 he wanted the operators, when I say the term	7 Bigelow and Mark Boal, correct?
8 "operators," the people on the ground to get	8 A. Yes.
9 the credit for the successful mission?	9 Q. They were the producers of the
10 A. I don't know that he ever used the	10 movie that became Zero Dark Thirty?
11 term "credit." I am really -- I am not sure	11 A. That is my memory.
12 that is how I would characterize it.	12 Q. Did you have a discussion with
13 I think he was frustrated that the	13 Mr. Bissonnette about Ms. Bigelow and
14 guys that sacrificed, that was the word he	14 Mr. Boal being present at Leon Panetta's
15 used a lot, so much and put their lives on	15 retirement party?
16 the line, sacrificed throughout their	16 A. I remember having those
17 careers were not the ones telling the story	17 conversations with Matt but I don't remember
18 of this historic moment.	18 when they happened and I couldn't say it was
19 Q. Did you have any concern, you	19 at the meeting you are asking me about now.
20 individually about learning information that	20 Q. I am now asking generally. I want
21 was potentially classified about the raid	21 to focus on the meeting again in a moment.
22 that ultimately resulted in killing of bin	22 I am now asking generally.
23 Laden?	23 A. Yes.
24 MS. FOLEY: Can you read back	24 Q. Did Mr. Bissonnette express to you
25 the question please?	25 any frustration with the fact that the

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<p style="text-align: right;">Page 85</p> <p>1 Sevier 2 producers of Zero Dark Thirty were present 3 at a function for the outgoing head of the 4 CIA? 5 A. Yes. 6 Q. What did he tell you about that? 7 A. I remember him telling me he 8 thought it was silly. My word. My 9 impression of his feeling was that he 10 thought they shouldn't have been there. 11 That Panetta's involvement with those guys 12 and the government's involvement with those 13 guys was inconsistent with the way -- with 14 their posturing around his book and with 15 their behavior around him. 16 Q. Did Mr. -- well, let me just 17 unpack that a bit. 18 Did Mr. Bissonnette express to you 19 any opinions or views on the fact that the 20 CIA was allowing Mark Boal and Catherine 21 Bigelow access to information about 22 operation Neptune Spear? 23 A. At any point? 24 Q. At any point. 25 A. Yes. We had conversations about</p>	<p style="text-align: right;">Page 87</p> <p>1 Sevier 2 part of operation Neptune Spear. But I don't 3 know -- I know that the hunt for the 4 terrorists whose name you don't want to use 5 and I won't use -- 6 Q. That is fair. 7 A. -- took many years. And I don't 8 actually sitting here today, was that all 9 called Operation Neptune Spear, I don't 10 know. 11 Q. That is a very fair point. So 12 let's call it the raid. 13 A. Okay. 14 Q. We can refer to it as the 15 Operation Neptune Spear raid. 16 A. Okay. 17 Q. We will call it the raid. And if 18 there is any confusion about it you let me 19 know. We are all talking about the raid 20 that ended in the culmination of the killing 21 of Osama bin Laden in Abbottabad and I think 22 in 2010, when was that? 23 In any event, was the 24 inconsistency about the information that was 25 being divulged to the public about the raid</p>
<p style="text-align: right;">Page 86</p> <p>1 Sevier 2 it. I can't remember the specifics of what 3 he said about it except that I remember him 4 holding it up as an example of inconsistent 5 positions from the U.S. Government on who 6 was allowed to talk about this raid. 7 Q. When you say "inconsistent 8 positions" I want to understand what you 9 mean by that. Meaning that certain people 10 could talk about the raid and certain people 11 couldn't? 12 A. Right. 13 Q. We are talking about firsthand 14 accounts of what took place, is that what 15 you are describing? 16 A. No. Not necessarily. Details 17 of -- the details of the raid. 18 Q. Details of Operation Neptune 19 Spear, when we talk about the raid I want to 20 make sure we define it correctly. You mean 21 details of Operation Neptune Spear? 22 A. I don't know what Operation 23 Neptune Spear refers to in total so I have a 24 hard time answering that. I know what the 25 raid is. I know the raid was at least a</p>	<p style="text-align: right;">Page 88</p> <p>1 Sevier 2 from the politicians versus the operations 3 on the ground, was that the tension and the 4 issue that Mr. Bissonnette was describing to 5 you? 6 A. Yes. I can remember him 7 expressing those kinds of feelings. 8 Q. Now, going back now to the 9 December meeting was there any discussion 10 about whether it was appropriate in one way 11 or another for Mr. Bissonnette to tell the 12 story and divulge details about the raid? 13 A. No. We didn't discuss whether it 14 was appropriate. 15 Q. Did you have any concern or 16 thoughts about whether it would be 17 appropriate for an operator such as Matthew 18 Bissonnette to write a book about the raid? 19 A. Can you explain your use of the 20 word "appropriate"?</p> <p>21 Q. I am using it in the most general 22 terms. Whether the government could make 23 any objection in any form about 24 Mr. Bissonnette writing a book about the 25 raid?</p>

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1	Sevier	1	Sevier
2	A. I was concerned from the beginning	2	the raid?
3	about whether he had the legal right to tell	3	A. He gave us a description of what
4	the story but not whether it was more	4	he did on that day and sort of generally the
5	generally appropriate for him to be telling	5	highlights of the raid.
6	the story.	6	Q. Did he -- did Mr. Bissonnette say
7	Q. Okay. So when I use the word	7	that what I am going to tell you is
8	"appropriate" I don't mean it in sort of	8	confidential or did he express any need for
9	the, you know, Good Housekeeping Seal of	9	confidentiality or secrecy in terms of what
10	Approval. And whether it is okay in Peoria.	10	he was telling you at the time?
11	What I mean is whether it is	11	A. I don't remember anything he might
12	appropriate from any kind of governmental	12	have said to that effect to us.
13	perspective. I mean that very generally,	13	Q. Did Mr. Bissonnette tell you that
14	governmental perspective, whether it would	14	he was concerned about his name being used
15	be appropriate for a military operator to	15	or the need -- and/or the need for secrecy
16	write a book about a raid that he took place	16	involving his participation in the book?
17	in -- that he took part in.	17	A. Again, I can't remember if it was
18	You mentioned that you were	18	at that meeting but, yes, around that time
19	concerned about whether he had some legal	19	we were having conversations with Matt and
20	issues with that, is that -- do I understand	20	Elise about the fact that his identity
21	your testimony?	21	would need to be kept completely
22	MS. FOLEY: Object to the form	22	confidential throughout the publication
23	of the question. Mischaracterizes it.	23	process.
24	BY MR. FURMAN:	24	Q. I asked you earlier, I know you
25	Q. What was your concern so I can ask	25	had met with Mr. Johnston yesterday but in
1	Sevier	1	Sevier
2	the better question?	2	getting ready for today's deposition did you
3	A. My concern was whether he was	3	review e-mails and other documents that
4	legally allowed to write the book that he	4	related to the book No Easy Day?
5	was offering us.	5	A. Yes.
6	Q. What did you do about that	6	Q. When did you do that?
7	concern?	7	A. In preparing for today?
8	A. I asked him and his	8	Q. Yes.
9	representatives whether he did have that	9	A. Really over the last two days.
10	right.	10	Q. How many hours did you spend doing
11	Q. What did they tell you?	11	that?
12	A. That he thought he did. He wasn't	12	A. In total maybe three, four.
13	sure and he would need advice on that	13	Q. Do you recall an e-mail exchange
14	question.	14	with Elise Cheney about your initial meeting
15	Q. From a publisher's perspective did	15	with Mr. Bissonnette?
16	you do anything to address that concern you	16	MS. FOLEY: Are you asking does
17	had other than rely on Mr. Bissonnette to	17	he recall it now?
18	obtain legal advice?	18	BY MR. FURMAN:
19	A. Yes. We required him to hire an	19	Q. Do you recall it?
20	attorney to advise him. We wanted to make	20	A. Not specifically.
21	sure he was asking for that advice he said	21	Q. I am going to show you what has
22	he needed.	22	been previously marked as Exhibit 4 in
23	Q. At the time that you met with	23	Mr. Bissonnette's deposition.
24	Mr. Bissonnette in December what details did	24	We will give copies to everybody.
25	he tell you and Mr. Tart and Ms. Ball about	25	This has already been previously marked.

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Page 93	Page 95
1 Sevier	1 Sevier
2 So have you had a chance to review	2 Q. So is it fair to say that the
3 that Exhibit 4?	3 production of the book was being kept quiet
4 A. Yes.	4 or confidential or secret in order to avoid
5 Q. Never mind that the name up on top	5 public knowledge about Mr. Bissonnette's
6 of -- the name on top is just one of my	6 involvement in the book?
7 legal assistants when we print out e-mails	7 A. Yes. That is fair to say. I
8 on Outlook it has the name of the user on	8 would say it was just about the book's
9 top.	9 publication in general.
10 A. Understood.	10 Q. Was there, other than -- a new
11 Q. Julie has absolutely no	11 question.
12 involvement whatsoever in this case of the	12 Did Mr. Bissonnette describe to
13 printing.	13 you any need for secrecy about his
14 Does this refresh your	14 involvement in the book at any point in
15 recollection as to when that meeting took	15 time?
16 place?	16 A. As I think I said earlier, he was
17 A. Yes. It looks like it must have	17 concerned about his name being kept
18 been on or before December 20.	18 confidential.
19 Q. Who was preparing the contract	19 Q. Was he concerned about any
20 that was referenced?	20 government officials or military supervisors
21 A. The Penguin contracts department.	21 or commanders being made aware that he was
22 Q. Before -- let me just ask you.	22 writing a book?
23 What prompted you to send this e-mail?	23 A. I don't know what he was concerned
24 A. I can't remember specifically.	24 about.
25 Q. Normally when -- normally, in the	25 Q. Did he express it to you is what I
1 Sevier	1 Sevier
2 ordinary course of publishing a book when do	2 am asking.
3 you first start to tell the media about the	3 A. Yes, I don't. I can't remember a
4 book itself? What is the general process?	4 specific instance where he expressed that
5 Is it before the --	5 concern.
6 A. For a typical book, conversations	6 Q. Did you meet with Matt Bissonnette
7 with the media begin, let's say, six months	7 again after that December meeting?
8 before the publication date. Generally.	8 A. Yes.
9 Q. When did you first start having	9 Q. When?
10 conversations with the media about No Easy	10 A. The next time I think was in
11 Day?	11 January of 2012.
12 A. The first conversation that I ever	12 Q. Was that in New York?
13 had with the media was to my knowledge or my	13 A. No.
14 memory anyway is with the 60 Minutes team	14 Q. Where was that?
15 that I mentioned earlier at their offices	15 A. Washington, D.C.
16 which I think was sort of around the	16 Q. How did that meeting take place?
17 beginning of the summer.	17 How did it come about?
18 Q. That is not six months before the	18 A. We scheduled it so that we could
19 publication so why was this book handled	19 talk further about what would be in the
20 differently?	20 book, about how the book would be structured
21 A. Because we wanted to control what	21 and put together.
22 we thought was going to be a big story and	22 Q. Did Elise Cheney arrange the
23 we didn't want the media knowing about it	23 meeting?
24 before it was advantageous to us to tell	24 A. She was a part of arranging the
25 them.	25 meeting. I don't recall who took the lead.

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BISSONNETTE vs PODLASKI

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97-100

	Page 97	Page 99
1	Sevier	Sevier
2	Q. Who took the lead?	2 of what the job would entail, what kind of a
3	A. I just said I don't recall.	3 guy Matt was, inasmuch as that was important
4	Q. Oh, you don't recall. Who was at	4 for him to know about whether he wanted the
5	the meeting?	5 job, what -- you know, what our goals were
6	A. I was there, Elise was there, Matt	6 for what the book would be.
7	was there and Kevin Mauer was there.	7 Q. Did you discuss with Mr. Mauer any
8	Q. How did Kevin Mauer come into the	8 of the potential objections that the
9	picture?	9 government would have to the book being
10	A. He was hired as Matt's co-writer	10 published?
11	on the book.	11 A. I don't remember discussing that
12	Q. Who made that decision to hire	12 with him.
13	Kevin Mauer?	13 Q. Did you discuss with Mr. Mauer
14	A. Ultimately Matt selected him.	14 whether he had any kind of security
15	Q. Were you involved in that	15 clearance that would have allowed him to
16	decision-making process?	16 obtain information that related to the raid?
17	A. Yes.	17 A. No.
18	Q. How?	18 Q. Did Mr. Mauer express to you any
19	A. Elise and I researched and found a	19 concern about governmental clearance?
20	handful of candidates. I think it was	20 A. Not that I remember.
21	three, who we thought would be appropriate	21 Q. Did discussion come up with
22	and worth introducing to Matt as possible	22 Mr. Mauer about any need for a
23	co-writers and Kevin was one of them.	23 prepublication review of the book before it
24	Q. Did Kevin Mauer have prior	24 is published?
25	experience in writing military books?	25 A. I just don't remember.
	Page 98	Page 100
1	Sevier	Sevier
2	A. Yes, he did.	2 Q. To the best of your knowledge up
3	Q. Did you have a discussion with	3 until that point there was no firsthand
4	Kevin Mauer before he was retained to be the	4 account published about the raid, correct?
5	co-author? This is apart from the meeting	5 A. Right.
6	in Washington.	6 Q. And the information in the media
7	A. Right.	7 about the Operation Neptune raid was all
8	Before -- did I speak with him --	8 secondhand accounts through authors or
9	sorry.	9 writers, correct?
10	Is the question did I speak with	10 A. Journalists, talking heads on TV,
11	him before the meeting?	11 et cetera.
12	Q. Correct. Yes.	12 Q. You are aware that there was a
13	A. Yes.	13 very lengthy account of the raid that was
14	Q. What was that discussion?	14 published through The New Yorker?
15	A. I -- my memory is that I described	15 A. Yes. I am aware of that.
16	to him what the job was that he was being	16 Q. Did you read that before meeting
17	considered for before he met with Matt so	17 with Mr. Bissonnette in December of 2011?
18	that Matt could interview him.	18 A. I read that when it was published
19	Q. What did you describe? What was	19 or around the time it was published but
20	the description of what he would be doing?	20 honestly sitting here today I can't remember
21	A. You know working with Matt to put	21 when that was, whether it was before or
22	his memories down on paper and doing a	22 after I met Matt.
23	traditional job that a co-writer does with	23 Q. Did you have any concerns about
24	someone like Matt who has never written a	24 whether the CIA or the White House or any
25	book before so we talked about the mechanics	25 governmental agency would object to

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101-104

	Page 101		Page 103
1	Sevier	1	Sevier
2	Mr. Bissonnette writing the book at any	2	A. In Washington, D.C.?
3	point in time?	3	Q. In D.C.
4	MS. FOLEY: Can you just read	4	A. Between a half day and a day. I
5	that back?	5	went up and back on the train in the same
6	THE WITNESS: Can I take a	6	day.
7	comfort break?	7	Q. So it was a several hour meeting?
8	MR. FURMAN: Yes.	8	A. Yes.
9	(Recess)	9	Q. What was discussed during that
10	MR. FURMAN: Let's have the	10	meeting?
11	question read back.	11	A. The outline for the book which is
12	(Record read)	12	to say Chapter 1, Chapter 2, Chapter 3 what
13	MS. FOLEY: Object to the	13	would be contained in those chapters
14	question. Asked and answered.	14	generally.
15	THE WITNESS: I feel like I have	15	Maybe a bit about publication
16	answered that.	16	although it was primarily focused primarily
17	I was concerned from the	17	about the co-writer, Kevin Mauer, Matt,
18	beginning that he had -- whether he	18	Elise and I agreeing on what would be in the
19	had the legal right to tell the story.	19	pages of the book, how the book would be
20	BY MR. FURMAN:	20	laid out, how the story would be told.
21	Q. Did Kevin Mauer -- did you discuss	21	Q. The participants in the meeting
22	that with Kevin Mauer at any point?	22	were you, Mr. Bissonnette, Elise Cheney and
23	A. I might have, I just don't	23	Mr. Mauer?
24	remember.	24	A. That's right.
25	Q. Let me show you what has been	25	Q. Where did the meeting take place?
1	Sevier	1	Sevier
2	marked previously as Exhibit 9 to -- Exhibit	2	A. In a hotel conference room in
3	9 in this case.	3	Washington, D.C.
4	Do you recall this e-mail?	4	Q. Fair to say at least a five-hour
5	A. I don't specifically recall it but	5	meeting or --
6	it looks -- but I see what it is.	6	A. Yes, approximately five hours
7	Q. Is that an aggressive schedule	7	between four and eight I would say. I can't
8	start to finish?	8	be more specific.
9	A. Yes.	9	Q. Were the contents of what
10	Q. Why was the schedule so	10	eventually became the book No Easy Day,
11	aggressive?	11	were -- was that the topic of discussion?
12	A. Because we wanted the book to be	12	A. Yes.
13	the first eyewitness account of the UBL raid	13	Q. During that conversation did
14	and so we had been thinking of publishing it	14	Mr. Bissonnette reveal to you details about
15	in that September and in order to publish in	15	the bin Laden raid?
16	September we needed an aggressive schedule	16	A. On that day in that conference
17	like this.	17	room I can't remember what details came up.
18	Q. Using this, the date of this	18	As I said it was really about outlining
19	e-mail, January 3rd as a marker, did you	19	which is to say Chapter 1 we will talk about
20	have your second meeting with	20	Matt's birth and high school years and in
21	Mr. Bissonnette in Washington before or	21	Chapter 20 we want to get to the raid. How
22	after?	22	are we going to fill all those other
23	A. After January 3rd.	23	chapters. So it was a high level editorial
24	Q. You described it as a -- I am not	24	conversation for the most part. We could
25	sure if you did. How long was meeting?	25	have gotten in the detail but I don't recall

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105-108

Page 105	Page 107
1 Sevier	1 Sevier
2 it now.	2 any photographs, any documents, anything
3 Q. Just in terms of describing it so	3 else?
4 I understand what the meeting -- what	4 A. Not that I remember.
5 happened at the meeting, it was an outline	5 Q. So it was just a hat that he
6 of what would eventually contain the content	6 showed you?
7 of the book, is that fair to say?	7 A. In that December 20th meeting or
8 A. Yes.	8 whatever the date of that meeting was the
9 Q. At what point in time were you	9 only thing I remember is that hat.
10 satisfied that Mr. Bissonnette was the real	10 Q. Just give me a visual description
11 deal, that he was actually not -- he wasn't	11 so I can, you know, somehow understand what
12 pretending that he was a Navy Seal and was	12 that hat looked like.
13 involved in the raid?	13 A. You can see it. It is on video
14 A. I was satisfied with that in the	14 with bin Laden wearing it or a hat like it.
15 meeting we had in Penguin's offices in	15 I can't say that it was the hat that bin
16 late -- mid to late December that we talked	16 Laden was wearing. That is what Matt said
17 about earlier.	17 and I believed him because he seemed like he
18 Q. What about -- what did	18 was the real deal as I said.
19 Mr. Bissonnette say or do that convinced	19 But it was like a brown stocking
20 you?	20 cap with kind of a flat top that is an
21 A. It was just a feeling the way he	21 unusual style at least here but that I think
22 talked, the stories he told. It was clear	22 we were familiar with at the time just being
23 he came from that world and, you know, you	23 the kind of hat that you would see in the
24 get a gut feeling about someone.	24 Middle East and that bin Laden had been
25 Q. Did he tell you any details about	25 seeing wearing it on some of those videos
1 Sevier	1 Sevier
2 the raid itself that made you believe that	2 that used to come out featuring him.
3 he participated in the raid?	3 Q. Did Mr. Bissonnette describe to
4 A. I don't remember any specific	4 you how he came into possession of the hat?
5 details that he told us that were	5 A. He said he grabbed it on the raid,
6 particularly relevant to that question. It	6 brought it home with him.
7 was more a general overall impression of the	7 Q. I just want to know your view, did
8 breadth of his knowledge of it and his world	8 you think it was strange that
9 that was convincing.	9 Mr. Bissonnette would actually have in his
10 Q. Did he show you anything?	10 possession an article from such an historic
11 A. Did he show us anything? Yes. He	11 raid in his possession?
12 did.	12 A. I didn't have any particular
13 Q. What did he show you?	13 opinion about that. I meet all kinds of
14 A. He had a hat.	14 people in my line of work.
15 Q. Okay.	15 Q. Do you know whatever happened to
16 A. That --	16 that hat?
17 Q. I have a hat too. Tell me about	17 A. I have no idea.
18 his hat.	18 Q. How about the discussion about
19 A. He said the hat was UBL's hat that	19 proceeds of the book going to a charity?
20 he had gotten on the raid.	20 When did that first take place?
21 Q. So he -- Mr. Bissonnette in this	21 A. Very early in the conversations I
22 December meeting produced a hat and told you	22 was having with Matt.
23 that this was Osama bin Laden's hat?	23 Q. What about that do you recall?
24 A. Yes.	24 A. He said he was hoping to donate
25 Q. Anything else. Did he show you	25 the proceeds to charities that supported

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109-112

Page 109	Page 111
1 Sevier 2 veterans interests, that is sort of 3 generally what I remember. 4 Q. How was that going to take place, 5 what was the process for that to happen? 6 A. I don't know. That was his -- 7 that would have been his responsibility. 8 Q. Did Dutton take any interest or 9 any active role in supporting that idea? 10 A. Not that I can remember beyond 11 printing his words in the book where he said 12 that was his intent. 13 Q. Did Dutton create a special 14 account for any kind of charitable 15 enterprise that relates to the book? 16 A. No. Not that I know of. 17 Q. To your knowledge has 18 Mr. Bissonnette made any charitable 19 contributions to any causes that you are 20 aware of? 21 A. In his life or -- 22 Q. In relation to the proceeds of the 23 book or in relation to his role as an 24 operator in the raid. 25 A. The only thing I know about it is	1 Sevier 2 The proceeds that can be 3 Interpreted as 100 percent. I am not -- did 4 you understand Mr. Bissonnette wanted to 5 donate 100 percent of the proceeds to 6 charity? 7 A. I mean at various -- that was my 8 general understanding. That was my general 9 understanding. 10 There might have been some 11 discussion at some point that he incurred 12 expenses related to his work on the book but 13 again that was really all his domain and it 14 had to do with monies paid out to him from 15 Penguin and Dutton and I wouldn't have had 16 any hand in that so I didn't focus too much 17 on that. 18 Q. I -- we have been doing this so 19 far. Keep your voice up so the reporter can 20 hear your -- 21 A. I will do my best. 22 Q. He hasn't mentioned that he hasn't 23 but your voice trails off just a bit and I 24 just wanted to remind you of that. 25 Going to the contract, what -- do
1 Sevier 2 that he gave all his proceeds to the 3 government so I don't think he gave any of 4 them to charity. I don't think he ever was 5 allowed to. 6 Q. Do you know if Mr. Bissonnette had 7 expressed to you any plan of how much he was 8 intending to donate to charities? 9 A. Not any specific plan beyond the 10 proceeds. 11 Q. Any percentage, any hard number, 12 any goals, anything of that nature? 13 A. I don't remember him ever putting 14 a hard number percentage on it. 15 Q. Did you have an understanding of 16 what he intended to do? 17 A. I think he wanted to give the 18 money to charity. 19 Q. All of it? 20 A. I really can't say beyond that he 21 said he wanted to give the proceeds from the 22 book to charity. 23 Q. I know I am pressing on this but I 24 just want to understand if I have your 25 testimony complete.	1 Sevier 2 you recall when the contract was first sent 3 out to Mr. Bissonnette? 4 A. I think a draft of the contract 5 was sent around the end of 2011, beginning 6 of 2012 but I don't specifically remember. 7 Q. I am going to have this next 8 exhibit marked which I believe is a draft 9 and I will show it to you in a second. 10 MR. FURMAN: It will be number 11 109. 12 (Draft of the contracts for book 13 was marked Exhibit 109 for identification) 14 BY MR. FURMAN: 15 Q. Mr. Sevier, can you take a look at 16 Exhibit 109? 17 Do you recognize it? 18 A. It looks like a draft of the 19 contracts for the book. 20 Q. Did you send it or did someone 21 from your office send it over to Elise 22 Cheney? 23 A. Someone at Penguin but I can't 24 recall anymore specifically than that would 25 have sent it to her.

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113-116

	Page 113	Page 115
1	Sevier	Sevier
2	Q. In the second page it is listed as	2 conversations with him did Dutton do any
3	in the bottom as ending in numbers 208.	3 other investigation to ensure that
4	A. Yes.	4 Mr. Bissonnette was actually the person he
5	Q. It describes in the whereas clause	5 was saying he was?
6	there what the subject matter description of	6 A. Not that I can remember now. Not
7	what the book was going to be?	7 that I can remember now, no.
8	A. Yes.	8 Q. At the bottom of the description
9	Q. And it states that it would be "a	9 in the last several sentences there, maybe
10	minute-by-minute account of the author's	10 just one long sentence it states, "The
11	direct experiences leading up to the raid,	11 author will not use the real names of any
12	on the raid and in the aftermath of the raid	12 individual United States nationals including
13	including the author's observation of the	13 his own and the author will not describe or
14	death of bin Laden at which the author	14 acknowledge the existence of any technology
15	hereby represents he was present."	15 that is classified by the U.S. Government or
16	Do you see that?	16 any other technology where public knowledge
17	A. I do.	17 of said technology might in the author's
18	Q. It also goes on to say that, "The	18 opinion compromise future operations in the
19	work shall include details of the author's	19 defense of the United States or of its
20	personal experiences during the raid that	20 interests."
21	have not previously been reported in the	21 Do you see that?
22	media or otherwise disclosed publicly."	22 A. Yes, I do.
23	Do you see that?	23 Q. There is a reference there about
24	A. I do.	24 avoiding divulging information that was
25	Q. Did -- who prepared that language?	25 classified about technology, fair to say?
	Page 114	Page 116
1	Sevier	Sevier
2	A. That would have been me as the	2 A. Yes.
3	editor in consultation with our contracts	3 Q. Was there any concern about
4	departments and as to who actually wrote it	4 divulging information that was classified
5	I can't recall, but would it have been	5 about the operation itself?
6	drafted and passed back and forth for	6 A. You mean among the author, the
7	revision.	7 publisher, our team, were we concerned about
8	Q. So ultimately the approval -- you	8 that?
9	participated in the approval of that	9 Q. Yes.
10	description of what the book would have	10 A. Yes.
11	been?	11 Q. Before this contract was
12	A. Yes.	12 ultimately signed did you express that in
13	Q. And did Mr. Bissonnette make the	13 any particular way, that concern?
14	representation that he was present at the	14 MR. JOHNSTON: Object to the
15	death of bin Laden?	15 form of the question to the extent
16	A. Yes.	16 that it asks for what is essentially
17	Q. Based on what we described earlier	17 in a document therefore best evidence.
18	you believed it was accurate among other	18 THE WITNESS: I had
19	things he produced the hat, right?	19 conversations with the author and his
20	A. I believed him, yes.	20 representatives that nobody wanted any
21	Q. He told you enough details about	21 classified information to be in this
22	the raid that he convinced you that what he	22 book. The author, the publisher, me,
23	was saying was true?	23 the editor, et cetera, the intent was
24	A. Yes.	24 to keep this book free of classified
25	Q. Other than obviously your	25 information.

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117-120

	Page 117		Page 119
1	Sevier	1	Sevier
2	BY MR. FURMAN:	2	that it is signed by some of our
3	Q. Putting aside the issue of	3	employees leads me to believe it
4	classified information, did -- in the	4	probably is.
5	formation of the contract did you address	5	BY MR. FURMAN:
6	any concerns about the author's right	6	Q. I want to ask you about that
7	legally, legal right, to tell that story?	7	portion that is being blacked out. It is on
8	MS. FOLEY: Object. Asked and	8	the third page in to this document.
9	answered.	9	Do you know why it is blacked out?
10	THE WITNESS: Yes.	10	A. I have no idea.
11	BY MR. FURMAN:	11	Q. Do you know or have any
12	Q. About the contract?	12	recollection when it was executed, the final
13	A. Yes.	13	version of the contract, that the subject
14	Q. In what form?	14	matter description of the book was redacted
15	A. I believe there is a clause in the	15	in one form or another?
16	contract somewhere that where he warrants --	16	A. In this specific document?
17	the author warrants that he has the legal	17	Q. Yes.
18	rights to tell the story.	18	A. Again, I really have no idea.
19	Q. Now, I am going to show you the	19	Q. Does Dutton have a copy of -- the
20	next document would be document 110. This	20	executed copy of, their own copy of this
21	is what I believe to be the signed copy of	21	contract?
22	the contract.	22	A. I am sure we do. We keep all of
23	(Copy of the publishing contract	23	our contracts.
24	was marked Exhibit 110 for identification)	24	Q. Okay. What I will do is we will
25		25	follow up with, I guess we will have to do
1	Sevier	1	Sevier
2	BY MR. FURMAN:	2	it through subpoena unless provided by
3	Q. Take a moment, Mr. Sevier, to	3	agreement, for a copy of the executed version
4	review Exhibit 109.	4	of this contract. Among other things I
5	My question as you review it	5	would like to know whether it is redacted or
6	whether you recognize this document as the	6	not. I have a copy --
7	final and executed copy of the publishing	7	A. Right.
8	contract with Mr. Bissonnette. Exhibit 110.	8	Q. -- and I don't know if the copy
9	Sorry.	9	that you have is redacted. I may ask you
10	MS. FOLEY: What is the question	10	followup questions to the extent your
11	again?	11	counsel will allow me to do so. I can do
12	MR. FURMAN: I will ask the	12	that simply by interrogatory as to whether
13	question again.	13	if in fact your version is redacted I would
14	BY MR. FURMAN:	14	like to know why.
15	Q. Do you recognize Exhibit 110 as	15	As you sit here today you have
16	the executed copy of the publishing contract	16	no -- one way or another do you know whether
17	between Dutton/Penguin with Mark Owen who we	17	your copy is redacted?
18	know is Matthew Bissonnette?	18	A. I don't.
19	MS. FOLEY: Take a look at it	19	I do have a clarification on an
20	and to the extent you can answer,	20	earlier answer if it is okay.
21	answer.	21	MS. HIROSE: You want to clarify
22	THE WITNESS: Without comparing	22	an earlier answer?
23	every word it is hard for me to say	23	THE WITNESS: Yes.
24	definitively especially since part of	24	You asked me if this is the
25	this has been blacked out but the fact	25	final executed contract and I guess

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121-124

Page 121	Page 123
<p>1 Sevier 2 the answer is no because it does not 3 have the author's signature on it. 4 The only final executed contract 5 would have the author's signature on 6 it as I understand it. 7 Is this a photocopy of the same 8 document without his signature on it? 9 Possibly. I can't tell you that. But 10 the final contract would have his 11 signature on it.</p> <p>12 BY MR. FURMAN: 13 Q. I think we will be following up 14 with you, we would need it for the trial of 15 the case so we will follow up with a 16 subpoena for that. 17 Again, I may want to ask another 18 question if I could by interrogatory. I 19 will just ask at trial if it is redacted as 20 to why it was. 21 Now, getting back to the 22 exhibit -- time line. Exhibit 9, an e-mail 23 that is in front of you that is dated 24 January 3rd. It has the time line on it. 25 A. Got it.</p>	<p>1 Sevier 2 knowledge if you can look at Exhibit 110. 3 MR. JOHNSTON: Let me for the 4 record object to the extent that you 5 are characterizing the document. 6 I recognize your reservation of 7 his answer but I want to be sure that 8 objection is on the record. 9 MR. FURMAN: Yes, understood it. 10 I am virtually positive we are dealing 11 with the final copy. We will only 12 know when we get it. 13 BY MR. FURMAN: 14 Q. But I am going to refer you to 15 Exhibit 110 just for the moment and 16 paragraph 4B. 17 A. Paragraph 4B? 18 Q. Yes. 4B. 19 4B, I will paraphrase it, says 20 that the book needs to be published within 21 12 months. That is in -- 22 MS. FOLEY: What language are 23 you reading? 24 MR. FURMAN: 4B, and it is the 25 last -- it is the second to last line</p>
Page 122	Page 124
<p>1 Sevier 2 Q. What were the next steps that you 3 recall after this e-mail was sent, what do 4 you recall happening? I am trying to get a 5 sense of what was taking place. 6 A. This was -- so right after this we 7 would have been finalizing our list of three 8 candidates for co-writer, the three best 9 options that Elise and I had come up with to 10 introduce to Matt. 11 And then as this refers to I spoke 12 with those three people to give them a sense 13 of what they would be interviewed about. 14 I believe that all three of them 15 met with Matt subsequent to this and then we 16 selected the co-writer. That would have 17 been the next step after this e-mail. 18 Q. Now, on -- in terms of publishing 19 the book, the contract and you have seen a 20 draft and at least a version of a signed 21 copy of the contract, Exhibit 110. I want 22 to refer you to it for a moment with the 23 understanding that this is, you know, not 24 the final signed copy. I appreciate that, 25 your addition to your answer. With that</p>	<p>1 Sevier 2 of 4B. I may be wrong on that. 3 Sorry. I have got someone smarter 4 than me correct me. 5 BY MR. FURMAN: 6 Q. Paragraphs 4A and B read in 7 conjunction require that the book -- that 8 "The publisher will within 18 months of 9 acceptance of the work publish or cause the 10 publication of the work to be published." 11 Do you see that? 12 A. I do. 13 Q. How did that 18-month deadline 14 come into play? 15 A. I don't remember specifically for 16 this contract why 18 months was chosen. It 17 looks to me like it is a revision to what 18 our standard boilerplate is. 19 Q. What is the standard boilerplate? 20 A. I think that it is -- actually I 21 am not sure what the stand boilerplate is. 22 I know that there is a range of date we use 23 and it is a negotiation point on each 24 project. 25 Q. In 4B it states that the failure</p>

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125-128

	Page 125	Page 127
1	Sevier	Sevier
2	of the publisher to publish the book within	2 A. I am sorry, guys. I need silence
3	the time frame set forth in 4A, which is 18	3 if I am going to understand this paragraph.
4	months, I am paraphrasing here, means that,	4 Can we just all -- thank you.
5	it -- the contract will not be deemed a	5 Okay. I have read it.
6	violation if the failure to publish is	6 Q. Let me walk you through some dates
7	caused by a restriction of -- by the	7 so that we are all on the same page.
8	government.	8 At the very top of that page
9	And I will refer you just so that	9 "Delivery of Manuscript," it says that the
10	you can understand why I am paraphrasing, it	10 proprietor, that would be Mr. Bissonnette,
11	is in paragraph 4B.	11 shall deliver to the publisher on or before
12	MS. FOLEY: Just to clarify your	12 June 1st of 2012 essentially the book.
13	question, make sure it is fully	13 A. Yes.
14	accurate as to what the contract says	14 Q. That is the date that is reflected
15	when it says that publisher will	15 in that time line that we discussed in that
16	within 18 months after acceptance of	16 e-mail?
17	the work publish or cause publication	17 A. Right.
18	of the work. So it is 18 months from	18 Q. And then if you take that June 1st
19	acceptance of the work.	19 date -- from that June 1st date the
20	MR. FURMAN: I think I said that	20 publisher has 18 months based on 4A, 4B to
21	but you are right to point that out	21 publish the book?
22	regardless, whether I said it or not,	22 MS. FOLEY: Object to the form
23	that is accurate.	23 of the question.
24	BY MR. FURMAN:	24 The contract says "from
25	Q. And what I am asking is -- now I	25 acceptance."
	Page 126	Page 128
1	Sevier	Sevier
2	am referring to the first three lines of 4B	2 MR. FURMAN: "From acceptance."
3	and what I am asking you is if you recall	3 MS. FOLEY: "Acceptance" is not
4	that the contract includes a clause that	4 the same as "delivery."
5	allows the failure of the publisher to	5 MR. FURMAN: Correct. You are
6	publish a book beyond 18 months or not to do	6 right.
7	it within 18 months if the failure to	7 BY MR. FURMAN:
8	publish is caused by restrictions of	8 Q. So from acceptance of the work.
9	government agencies.	9 Let's assume because it happened that the
10	Do you see that?	10 book is accepted by June 1st. Let's say it
11	A. Which -- you are referring to two	11 is accepted by.
12	different clauses here. The one you are	12 MS. FOLEY: You are saying
13	talking about now is 4B.	13 hypothetically.
14	Q. Read the first three lines of 4B	14 MR. FURMAN: It was accepted by
15	to yourself and then I will ask you	15 June 1st.
16	questions about it. That is the best way to	16 MS. FOLEY: Okay.
17	do it.	17 THE WITNESS: I want to clarify
18	If you need a magnifying glass I	18 that is not actually what happened.
19	have one.	19 For the purposes of this hypothetical
20	MS. FOLEY: Do you?	20 it is June 1st.
21	THE WITNESS: I don't need a	21 BY MR. FURMAN:
22	magnifying glass. Thank you.	22 Q. I am wondering whether it is even
23	BY MR. FURMAN:	23 worth asking the question but I am going to
24	Q. I got one for the nondisclosure	24 try.
25	agreement.	25 For the purpose of just this

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	Page 129		Page 131
1	Sevier	1	Sevier
2	hypothetical, if the work is accepted by	2	MS. FOLEY: I am going to object
3	June 1st, right, 18 months then would have	3	to the form of the question noting
4	been December 1st, I think of 2013?	4	that you are asking a lay person to
5	A. That sounds right.	5	interpret the legal obligations of a
6	Q. I will represent to you that	6	party in a contract.
7	someone next to me calculated that so it is	7	BY MR. FURMAN:
8	accurate.	8	Q. You can answer.
9	A. Okay.	9	A. Yes. That is my general
10	Q. Could then -- again making that	10	understanding.
11	assumption that the book would have been	11	If any of these conditions listed
12	accepted by June 1st, the book could have	12	here, the reason for the failure to publish
13	been published at any point in time before	13	then the author can't seek remedy under the
14	December 1st of 2013 as per the contract?	14	contract, keep the money and not having it
15	A. I mean I don't think that the way	15	published. That is the way I think of it.
16	I interpret these paragraphs and our	16	Q. So hypothetically if Matthew
17	contract generally, it is not that there is	17	Bissonnette submitted the book for a
18	a limitation of when we can publish but the	18	prepublication review and the government
19	paragraphs protect both the author and	19	decided to delay the process of reviewing
20	publisher from the circumstance where the	20	the book for any number of months and it
21	book doesn't get published or can't be	21	would have gone past the December 1st, 2013
22	published even though it has been accepted.	22	date, is it fair to say there would have
23	Q. Okay. The book obviously was	23	been no violation on the part of Dutton and
24	published in September of 2012. My point	24	no violation on the part of the author to
25	and what I am driving at is that the book	25	wait for that process to complete?
1	Sevier	1	Sevier
2	could have been published November --	2	MS. FOLEY: Object to the form
3	October, November, December of 2013 without	3	of the question.
4	any violation on the part of either yourself	4	MR. JOHNSTON: Object to the
5	or the author under the terms of this	5	form of the question.
6	contract?	6	MS. FOLEY: Do you want to read
7	A. Yes. That is my understanding.	7	the question back?
8	That is consistent with my understanding.	8	THE WITNESS: I am having a hard
9	Q. Okay. And in addition beyond that	9	time parsing the question and these
10	in 4B if in fact there was an objection or a	10	paragraphs to be honest. I would love
11	restriction as the word is used in the	11	to answer.
12	contract by a governmental agency there	12	(Record read)
13	would be no violation on the part of Dutton	13	THE WITNESS: I am not sure that
14	if they had failed to publish the book by	14	these paragraphs apply to that
15	December 1st or whatever that date would	15	circumstance because the work, the way
16	have been?	16	I understood it, could not be accepted
17	MR. JOHNSTON: Object to the use	17	in the legal sense until after any
18	of the word "objection" but I agree	18	such review happened so that is where
19	with the word "restriction." That is	19	my problem is here.
20	the word in the contract.	20	I am not -- I do not think that
21	THE WITNESS: I am sorry. What	21	these paragraphs are necessarily
22	is the question?	22	applicable to the situation you are
23	MR. FURMAN: I will have to ask	23	describing.
24	the reporter to read it back.	24	BY MR. FURMAN:
25	(Record read)	25	Q. Okay. And so let's focus on the

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Page 133	Page 135
1 Sevier	1 Sevier
2 acceptance part of it because that would	2 time is it fair to say that once the
3 have been the June 1st date and that is	3 publisher was in possession of the work that
4 referenced in 3A of the contract. That	4 was in a form that was satisfactory to the
5 is --	5 publisher that then as per 4A and B of the
6 MS. FOLEY: Let me just clarify.	6 contract then the publisher had 18 months
7 The delivery is referenced in	7 from which to publish the book?
8 3A.	8 A. Yes. Under -- that is my
9 BY MR. FURMAN:	9 understanding without holding myself up as a
10 Q. Give me a moment just to find the	10 contract expert or a lawyer who would need
11 section of the acceptance.	11 to parse this language more carefully, that
12 What I would suggest and I don't	12 sounds right to me.
13 mind doing this while a question is pending	13 Q. We are going to get the details of
14 is, I probably have about another hour or	14 this but there came a point in time when
15 so, hour-and-a-half, 90 minutes to go so if	15 there was an objection to the publication of
16 you want to break for lunch now this is a	16 the book from the government in August --
17 fine time to do it and we will resume. I	17 the end of August 2012, correct?
18 don't need a long lunch break but it is	18 A. Yes.
19 entirely up to you.	19 Q. Did the publisher make a decision
20 MS. FOLEY: Let's say 1:45.	20 one way or the other whether to submit the
21 (Luncheon recess: 12:46 p.m.)	21 book for a prepublication review?
22	22 A. No.
23	23 Q. At any point in time before
24	24 August 30, 2012, that is the date of the Jeh
25	25 Johnson letter. You know what I am
Page 134	Page 136
1 Sevier	1 Sevier
2 AFTERNOON SESSION	2 referring to when I say the August 30th Jeh
3 1:44 p.m.	3 Johnson letter?
4 BY MR. FURMAN:	4 A. Yes.
5 Q. Mr. Sevier, 3A of the contract,	5 Q. Before the August 30, Jeh Johnson
6 Exhibit 110, that we were looking at before	6 letter did Dutton take any steps to submit
7 the break, there is a reference there that	7 the book for a prepublication review by the
8 the author should deliver to the publisher	8 U.S. Government?
9 before June 1st of 2012 the work in a form	9 A. No.
10 that is satisfactory to the publisher. Is	10 Q. Did -- now hypothetically if
11 that -- I paraphrased it obviously but is	11 Dutton chose to do so after August 30, 2012
12 that what you understand the contract to	12 letter from Jeh Johnson could Dutton have
13 say?	13 done so and have been protected pursuant to
14 A. Yes.	14 the contract to the best of your knowledge,
15 Q. Did that take place? Did -- was	15 I am not asking as a lawyer but to the best
16 the work delivered in this -- as far as No	16 of your knowledge under 4B of the contract?
17 Easy Day was concerned was it delivered to	17 MS. FOLEY: Object to the form
18 the publisher by June 1st in a form that was	18 of the question.
19 satisfactory to the publisher?	19 THE WITNESS: I am not totally
20 A. My memory is that we were delayed	20 following.
21 about a month and it was closer to July 4th,	21 You are asking me if we had
22 around there that we actually had the	22 submitted for review after
23 complete manuscript.	23 August 30th, 2012?
24 Q. All right.	24 BY MR. FURMAN:
25 From say that July 4th period of	25 Q. Sure. At any point in time after

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Page 137	Page 139
1 Sevier 2 August 30, 2012. 3 Let's say on September 1st of 2012 4 Dutton decided that they would submit the 5 book for a prepublication review to the U.S. 6 Government. 7 Let's say that that process took 8 two years. 9 Under the terms of the contract 10 there would be no penalty to Dutton for 11 that? 12 MS. FOLEY: I am going to object 13 to the form of the question to clarify 14 that Dutton had no obligation to 15 submit to the government for review 16 and would not have been a party to 17 submit to the government for a review. 18 MR. FURMAN: You are doing 19 speaking objections now. I don't mind 20 if you object. Obviously you have a 21 right to, but all of your objections 22 have been so far speaking objections. 23 And since this is probably my third or 24 fourth deposition in my career I 25 appreciate that when lawyers give	1 Sevier 2 MR. FURMAN: I would like you to 3 refrain from speaking objections. All 4 I can do is ask you. 5 All right. Can I have my last 6 question read back. 7 All I can do is ask and, you 8 know, nothing I can do beyond that. 9 (Record read) 10 MS. FOLEY: I will state for the 11 record my objection has nothing to do 12 would how to answer the question. It 13 has to do with the form of the 14 question. 15 MR. FURMAN: Okay. 16 THE WITNESS: By September 1st, 17 2012 we had a half million copies of 18 this book in the marketplace. 19 I am not sure how we could have 20 asked about applying for a security 21 review at that point so I am not sure 22 how to answer the question. 23 BY MR. FURMAN: 24 Q. Is that your answer to the 25 question?
1 Sevier 2 speaking objections they are in one 3 form or another signaling to their 4 client how to answer. So I would like 5 it if you could to avoid speaking 6 objections. 7 MS. FOLEY: I understand your 8 position. My objections are 9 appropriate. 10 MR. FURMAN: But they are 11 speaking objections. 12 MS. FOLEY: We don't need to 13 fight about the form of your question. 14 I understand your point and I 15 have it in mind and I am confident in 16 what I am doing. 17 MR. FURMAN: I am not 18 challenging your competence. 19 I am just -- you know, I am 20 protecting my client's rights and my 21 client's rights are -- 22 MS. FOLEY: I understand that 23 you have to make that statement. We 24 each have to have our own positions on 25 this.	1 Sevier 2 A. I guess it is. You tell me. Does 3 it answer your question? 4 Q. I don't think so. Because I am 5 not asking you about the fact that there 6 were books printed or otherwise. 7 What I am asking you is if on 8 September 1st of 2012 if Dutton decided to 9 submit the book for a prepublication review 10 there would have been -- that would have 11 protected them from any violation of the 12 contract to publish within 18 months of 13 acceptance, is that fair to say? 14 MR. JOHNSTON: Object to the 15 extent that it mischaracterizes the 16 contract. 17 THE WITNESS: My answer is that 18 by September 1st, 2012 the book was 19 for all intents and purposes 20 published. 21 The books were in the 22 marketplace so it would have been 23 impossible to ask for a prepublication 24 review in my opinion.

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	Page 141		Page 143
1	Sevier	1	Sevier
2	BY MR. FURMAN:	2	understand about our business especially in
3	Q. Let me ask you what that word	3	a huge country like the United States is
4	"publish" means. Does the word "publish"	4	that when you are printing many hundreds of
5	mean that books are in bookstores?	5	thousands of copies of a book to go to
6	MS. FOLEY: Are you asking for	6	thousands of bookstore locations and other
7	his opinion?	7	retailers around the country, you have to
8	MR. FURMAN: No. I want to know	8	print those books many weeks before the
9	what it means.	9	publication date to get them on trucks and
10	BY MR. FURMAN:	10	get them shipped to distributors around the
11	Q. In the context of No Easy Day when	11	country so --
12	was the book published, what date?	12	Q. I am not asking about the process.
13	A. The publication date was	13	I can understand that printing and delivery
14	September 4th, 2012.	14	and UPS and it sounds like a whole army of
15	Q. September 4th, 2012?	15	people involved but I am not asking you
16	A. That is my memory.	16	about the process of getting the book to the
17	Q. On September 3rd of 2012 could	17	bookshelves.
18	Dutton have submitted the book for a	18	I am asking you about a
19	prepublication review, yes or no?	19	publication date. So I will ask you again.
20	MS. FOLEY: Asked and answered.	20	Out of all the people in the world I am here
21	THE WITNESS: I don't see how.	21	to ask you this question. When was No Easy
22	I don't see how. Typically in my	22	Day published?
23	experience it is not the publisher's	23	MR. JOHNSTON: Objection. Asked
24	job to do that.	24	and answered.
25	I wouldn't know who to call, I	25	MS. FOLEY: Objection to the
1	Sevier	1	Sevier
2	wouldn't know where to submit it.	2	form of the question.
3	BY MR. FURMAN:	3	THE WITNESS: I think I said
4	Q. On September 3rd of 2012 do I have	4	that numerous times. The publication
5	an understanding that the book was published	5	date was 9/4/12.
6	on September 4th of 2012, is that what I	6	MS. FOLEY: I am also going to
7	understand you are saying?	7	object to the extent you are asking
8	A. Yes. Colloquially that makes	8	the witness a question about what
9	sense, yes, that is accurate. The	9	publication means for legal purposes.
10	publication date, the book was published on	10	BY MR. FURMAN:
11	September 4th, 2012. That is accurate.	11	Q. Now on September 30th --
12	Q. I can only ask you the publisher.	12	MS. FOLEY: September 30?
13	So your job with No Easy Day was to publish	13	BY MR. FURMAN:
14	the book, right?	14	Q. No, I am sorry, forgive me,
15	A. Right.	15	August 30th of 2012 when the Jeh Johnson
16	Q. So when I ask -- if I am going to	16	letter was received that was before
17	ask anyone in the universe I going to ask	17	September 4th of 2012, right?
18	you, Ben Sevier, when that book was	18	A. Yes.
19	published, right?	19	Q. And so that -- following your
20	A. I hear what you are saying. I	20	testimony that was several days before the
21	understand the question now.	21	publication of the book of No Easy Day,
22	Q. Okay.	22	correct?
23	A. But to me there is a difference	23	MS. FOLEY: Object.
24	between published and printed.	24	THE WITNESS: Yes.
25	I mean, we -- what you have to	25	

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	Page 145		Page 147
1	Sevier		
2	BY MR. FURMAN:		
3	Q. And on that day or the next day		
4	did anyone, you, Elise Cheney, anyone		
5	involved including the author submit the		
6	book for a prepublication review?		
7	A. Not to my knowledge.		
8	Q. Did you have a discussion with		
9	anyone about whether to submit the book for		
10	a prepublication review on August -- after		
11	receipt of Jeh Johnson's letter of August		
12	30th, 2012?		
13	A. Not that I can recall.		
14	Q. Did you think it was worth		
15	exploring or considering?		
16	A. No. Not as far as I remember.		
17	Q. Let me switch to ask you some		
18	questions just about the payments and you		
19	may not have the answers and if you don't		
20	that is fine. I just want to know how to		
21	get the answers.		
22	So, first question, I am asking		
23	about the advances and royalties.		
24	A. Okay.		
25	Q. How is the advance paid to		
	Page 146		
1	Sevier		
2	Mr. Bissonnette?		
3	A. Typically by contract structure in		
4	a series of payments. It happens at various		
5	milestones in the production and publication		
6	process so this contract my memory is it was		
7	a million dollar advance. There were four		
8	payments outlined in the contract.		
9	One that was due on signing of the		
10	contract, one that would have been due on		
11	delivery and acceptance of the contract.		
12	One that would have been due upon		
13	publication and one that would have been due		
14	I suspect although I can't remember		
15	specifically on paperback publication.		
16	MR. JOHNSTON: I am sorry. What		
17	was that last?		
18	THE WITNESS: On paperback		
19	publication.		
20	BY MR. FURMAN:		
21	Q. How did the money get delivered,		
22	just the mechanics, was it wired, check?		
23	A. I don't know.		
24	Q. Who handles that for Dutton? Is		
25	it --		
	Page 148		
1	Sevier		
2	publisher related to the sales of the book		
3	or subsidiary rights licensing the book or		
4	any other kind of earnings around that book		
5	are held in royalty accounts for the author		
6	and paid out every six months.		
7	Q. What is the arithmetic that is		
8	attached to that? In other words, how --		
9	how is the royalty number decided. For		
10	example, if you, Dutton receives \$100,000		
11	worth of book sales from around the country		
12	and the world related to No Easy Day it goes		
13	into a Dutton account. How then is the		
14	royalty number calculated?		
15	MS. FOLEY: Objection. Lack of		
16	foundation.		
17	THE WITNESS: It is laid out in		
18	the contract as a percentage of either		
19	the list price of the book or the net		
20	receipts to the publisher, I believe.		
21	Those are the two primary ways.		
22	There may be others that I am		
23	not thinking of.		
24	It has -- it has to do with the		
25	kind of sale that is happening, like		

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	Page 149		Page 151
1	Sevier	1	Sevier
2	hardcover -- for instance, there is a	2	person to be able to get the records so that
3	hardcover royalty which might be	3	we understand how much has come into Penguin
4	different from the royalty paid on a	4	based on No Easy Day in gross figures from
5	paperback copy which might be	5	the time of publication in September --
6	different from the royalty paid on an	6	September 4th of 2012 until the present day.
7	electronic copy which might be	7	That is --
8	different from any payments associated	8	MS. FOLEY: If you look the
9	with foreign publishers to whom we	9	royalty payments are sent to the
10	have licensed the rights so that would	10	agent, literary agent.
11	be -- so all of that is calculated in	11	The royalty statements are going
12	the royalty accounting department.	12	to have the information you are
13	BY MR. FURMAN:	13	asking.
14	Q. So the gross receipt numbers are	14	MR. FURMAN: I see. Is that why
15	then -- you take that number, you apply	15	you are pointing it out? Thank you
16	percentages that are outlined in the	16	very much. You are not completely an
17	contract and then you have the number that	17	obstructionist all the time.
18	is the royalty amount for the author. I am	18	Thank you. We will be trying to
19	saying that in a very general way. I just	19	get that from Elise Cheney. I am sure
20	want to know --	20	she will be very happy for me to ask
21	A. That is essentially right. That	21	that question.
22	sounds right to me.	22	BY MR. FURMAN:
23	Q. For No Easy Day does it have	23	Q. By the way, I probably should have
24	records that they maintain that indicate the	24	asked you, did you read Mr. Bissonnette's
25	amount of gross receipts for the various	25	deposition transcript before today?
	Page 150		Page 152
1	Sevier	1	Sevier
2	versions of the book, paperback, hard copy,	2	A. No. I have not seen it.
3	et cetera, on a rolling basis from the time	3	Q. Were you advised by anyone what he
4	that it was first published on September 4th	4	testified to?
5	of 2012 to the current -- to today, do you	5	A. No.
6	have accounts for that?	6	Q. I don't know if you know this but
7	A. Yes. Penguin's royalty accounting	7	I will ask it. As of today how much has
8	department has those records as far as I	8	been paid in royalties to Mr. Bissonnette?
9	know. They certainly do for every other	9	A. I don't have that figure in front
10	book I published.	10	of mind.
11	Q. Okay. We would like to have	11	Q. Just so I know how to get the best
12	access to that. Whether we will get it we	12	source of that information it would be Elise
13	will see.	13	Cheney would have that information?
14	I am trying to understand who I	14	A. Are you asking me?
15	would be asking for that information.	15	Q. I am asking your lawyer but she
16	MS. FOLEY: Let me point you to	16	just nodded.
17	the paragraph -- the rider to	17	MS. FOLEY: Well, I didn't know
18	paragraph 27 in the contract which	18	you were. I am not supposed to be
19	spells out how payments are made.	19	testifying.
20	It is page 12 on your exhibit.	20	MR. FURMAN: We are talking
21	MS. HIROSE: Exhibit 110.	21	about --
22	BY MR. FURMAN:	22	MS. FOLEY: The royalty
23	Q. The process -- I wanted to know	23	statements will say how much have been
24	just where the records are because we would	24	attributed to the author.
25	like to issue a subpoena to the appropriate	25	MR. FURMAN: Got it. Okay.

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	Page 153	Page 155
1	Sevier	Sevier
2	BY MR. FURMAN:	Q. Yes. From you dated June 28th,
3	Q. Now let me ask you about No Hero.	3 2012.
4	That's a different book.	A. I got it, yes.
5	I don't have the contract but is	Q. At 11:04 and you are e-mailing
6	it generally the same format in terms of	Kevin Mauer, Elise Cheney, Mr. Bissonnette
7	having a contract and the royalties being	and Alex Jacobs.
8	distributed based pursuant to a contract	It says -- the subject is "Lawyer
9	agreement with literary agent, the same	Edits."
10	mechanics apply for payment?	In the body of the e-mail you are
11	A. The same mechanics but I will	referring to edits that I am presuming
12	point out that the agreement is with the	Mr. Podlaski had made and that you thought
13	author and the accounting goes through the	the lawyer had made a significant
14	agent in most cases, yes. It is essentially	contribution. What did you mean by that?
15	the same.	A. I frankly don't really remember.
16	Q. With No Hero if we were to seek	Q. Who is Alex Jacobs?
17	information relating to the book sales of	A. He worked in Elise Cheney's
18	that particular book, would the -- would	office. I am not sure what his title was.
19	that information be available through the	Q. Did you receive during the course
20	literary agent as well as it is with No Easy	of the various edits to the book, did you
21	Day?	receive copies of the evolving manuscript of
22	A. As far as I know. It should be	No Easy Day from Kevin Mauer or from
23	the same.	Mr. Bissonnette directly in 2012?
24	Q. Let me ask you about Kevin	A. Yes.
25	Podlaski. Did you ever meet him?	Q. Did you -- I am mumbling. Cut my
	Page 154	Page 156
1	Sevier	Sevier
2	A. No.	mumbles, right?
3	Q. Do you know when he was hired?	Those various manuscripts
4	A. I don't specifically know.	contained the details of the raid, correct?
5	Q. Do you know -- strike that.	A. Parts of them, yes.
6	Were you involved in the hiring of	Q. Did you undertake any effort to
7	Kevin Podlaski in any way?	maintain the confidentiality and the -- for
8	A. No. Not really.	lack of a better way of describing it the
9	Q. To the best of your knowledge who	secrecy of that information on your computer
10	made the decision to hire him?	or your server at Dutton?
11	A. To the best of my knowledge it was	A. Not particularly.
12	the author.	Q. Was that ever a consideration of
13	Q. To the best of your knowledge who	yours?
14	was Kevin Podlaski representing?	A. Inasmuch as I didn't send it to
15	A. Matt Bissonnette.	anyone other than the core group here who
16	Q. Anyone else?	were involved in the producing of the book,
17	A. No. Not as far as I know.	yes, but beyond that I don't recall making
18	Q. In one of the e-mails I will refer	any other special efforts.
19	you to Exhibit 108, if you could turn to	Q. Let me ask you about No Hero for a
20	page 78 there is an e-mail from you dated	moment as a benchmark. Do you know what the
21	June 28th of 2012.	gross sales were of No Hero?
22	MS. FOLEY: On page 78?	A. Not off the top of my head.
23	MR. FURMAN: Yes, number 78.	Q. That information I can get from
24	THE WITNESS: An e-mail from me?	Elise Cheney?
25	BY MR. FURMAN:	A. She should have it.

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	Page 157		Page 159
1	Sevier		Sevier
2	Q. On the same document, 108 if you	2	Q. And at this moment you don't
3	could turn to page 12.	3	recall what Kevin Mauer told you about his
4	A. Okay.	4	conversations with someone at JSOC?
5	Q. There is an e-mail from you dated	5	A. Not specifically. He was talking
6	August 25th, 2012. And it is not clear to	6	to a contact there who he knew and had known
7	me who you are writing to. But I am	7	for some years who must have told him
8	assuming it includes Kevin Mauer, Kevin	8	something that they were talking about or
9	Podlaski, Elise Cheney, someone whose last	9	thinking about or wanted to communicate to
10	name is Lehane, Peter Ragone and Christine	10	Matt and to us but sitting here now I can't
11	Ball.	11	recall what that was.
12	Your e-mail at 12:06 states, "I	12	Q. Before August 25th of 2012 did
13	think me, Mauer and Podlaski should review	13	anyone, Dutton or Elise Cheney, or the
14	that call Christine and Mark have media	14	author, release copies, advanced copies of
15	training, let's divide and conquer. Kevin	15	the book to various media agencies and
16	P. can you will call me and I will	16	government officials?
17	conference in Kevin."	17	A. Prior to 8/25?
18	Do you see that?	18	Q. Yes.
19	A. I do.	19	A. Yes.
20	Q. In response to Kevin Mauer's	20	Q. Do you know when that took place?
21	e-mail of that day where he is in a	21	A. Not specifically except that prior
22	different time zone presuming, he is saying	22	to the end of August we were in conversation
23	"I had a much longer talk with JSOC about	23	with and had proceeded down the path with 60
24	concerns. If you guys want to set up a call	24	Minutes towards the interview that
25	to review or if you want me to just call	25	eventually aired with Matt and as a part of
1	Sevier		Sevier
2	Kevin. I have spoken to MO about it. Let	2	that at some point they signed a
3	me know."	3	nondisclosure agreement and received a copy
4	Do you see that?	4	of the manuscript.
5	A. Yes.	5	Q. Was that before or after
6	Q. What is the -- what was Kevin	6	August 1st of 2012?
7	Mauer talking about, what is "JSOC"?	7	A. I can't say for sure.
8	A. JSOC stands for Joint Special	8	Q. Was it before -- I am just using
9	Operations Command.	9	benchmarks as a way to remember, before or
10	Q. What concerns did Kevin Mauer	10	after July 4th of 2012?
11	address with you?	11	A. It would have been after July 4th,
12	A. I don't remember if I ever knew.	12	2012.
13	I guess I must have if we had this call but	13	Q. So at some point during that
14	I don't recall.	14	summer, after the July 4th weekend let's
15	Q. You don't remember any of the	15	call it of 2012 and at some point before
16	details of the call?	16	August 25th of 2012 you had released a copy
17	A. Kevin's call with JSOC I obviously	17	of the manuscript to 60 Minutes pursuant to
18	wasn't on it. The call that we had after	18	a nondisclosure agreement?
19	that it is referred to in the 1206 e-mail?	19	A. That is my memory.
20	Q. Yes.	20	Q. Why a nondisclosure agreement?
21	A. I can't recall specifically what	21	A. We did not want them to report on
22	their concerns with on August 25th.	22	the book before a date that we mutually
23	Q. It had presumably something to do	23	agreed on.
24	with the book?	24	Q. Why?
25	A. I think that is fair.	25	A. Because we wanted the publicity

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<p>1 Sevier 2 around this book and the story about this 3 book that happened in the media, whatever it 4 was to happen at the same time as the 5 publication of the book.</p> <p>6 Q. So you wanted to control the story 7 and control the timing of the release of the 8 book essentially?</p> <p>9 A. That's right.</p> <p>10 Q. Obviously it is for commercial 11 reasons, correct?</p> <p>12 A. Right.</p> <p>13 Q. The book was released to various 14 government agencies as you are aware, 15 correct?</p> <p>16 A. I am aware of it being passed by 17 the author through the co-author, Kevin 18 Mauer, to one contact in the government.</p> <p>19 Q. Who was that contact?</p> <p>20 A. I don't know his name or if I did 21 know it I have forgotten it.</p> <p>22 It was somebody who Kevin Mauer, 23 the co-writer, had worked with in a public 24 affairs office in one of the branches of the 25 military.</p>	<p>1 Sevier 2 decision was made.</p> <p>3 Q. This is obviously several weeks 4 before the publication date of 5 September 4th, 2012, right?</p> <p>6 A. Right.</p> <p>7 Q. Why was the book released at least 8 in this one form to Kevin Mauer's contact 9 who worked in public affairs for some 10 undescribed government agency?</p> <p>11 A. It was at the author, Matt's, 12 request as I recall.</p> <p>13 Q. Do you know why Mr. Bissonnette 14 asked for this?</p> <p>15 MS. FOLEY: Object to the form.</p> <p>16 THE WITNESS: I think it was 17 because he wanted to give his former 18 colleagues a heads-up as to what was 19 coming.</p> <p>20 BY MR. FURMAN:</p> <p>21 Q. Why -- to your knowledge why was 22 that necessary, why was a heads-up 23 necessary?</p> <p>24 A. As far as I know it was just Matt 25 wanting to play it straight with his former</p>
<p>1 Sevier 2 Q. So it was just one contact person 3 that received a copy, an advanced copy of 4 the book through Kevin Mauer?</p> <p>5 A. As far as I can remember.</p> <p>6 Q. Was this part of a strategy that 7 was devised by Dutton along with Christine 8 Ball to release advanced copies of the book?</p> <p>9 MS. FOLEY: By "this" you mean 10 the release to the contact in the 11 government --</p> <p>12 MR. FURMAN: Right, yes.</p> <p>13 MS. FOLEY: -- was it part of 14 the Dutton media strategy?</p> <p>15 MR. FURMAN: Correct.</p> <p>16 THE WITNESS: No.</p> <p>17 BY MR. FURMAN:</p> <p>18 Q. Was this something that was just 19 done by Kevin Mauer without your knowledge?</p> <p>20 A. No. We knew it was going to 21 happen.</p> <p>22 Q. Did you object to it in any form 23 or another?</p> <p>24 A. Ultimately, no. I can't recall 25 what the discussions were before the</p>	<p>1 Sevier 2 unit and not ambush them or surprise them.</p> <p>3 Q. Did Matt tell you that publishing 4 the book without a heads-up was some sort of 5 ambush to his colleagues?</p> <p>6 A. He didn't. Those are my words, 7 not his.</p> <p>8 I don't recall his specific words 9 but the way I understood it then, he had 10 relationships, basic human relationships 11 with former colleagues and friends who were 12 in that community and he thought he was 13 doing the decent thing by giving them a 14 heads-up.</p> <p>15 Q. So I want to understand why that 16 is a decent thing to do.</p> <p>17 What was the concern that you 18 understood from Matt Bissonnette's 19 perspective as to the publication of a story 20 about the killing of bin Laden?</p> <p>21 MS. FOLEY: Object to the form 22 of the question. And asked and 23 answered.</p> <p>24 THE WITNESS: There are some 25 people in my experience in that</p>

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1	Sevier		
2	community of special operators who	1	Sevier
3	don't think it is the right thing to	2	it looks like and what it spells out in the
4	do, to write books about your past war	3	document. We made a publishing decision at
5	experiences.	4	some point before this release was written
6	There are many others who do	5	to change the publication date from the 11th
7	just that and there are countless	6	to the 4th and we put out a statement to
8	dozens, hundreds even, maybe thousands	7	that effect.
9	of books by former special operators	8	Q. Who -- this is -- was -- sorry.
10	of various kinds and the tension	9	Was this Christine Ball's
11	between those two groups of people	10	responsibility to deal with the media?
12	within that community is something	11	A. Yes.
13	that I think Matt was aware of and	12	Q. Would she have sought your
14	wanted to manage for his own personal	13	approval before any information is released
15	reasons.	14	about the book?
16	You would have to ask him for	15	A. She would have sought my input is
17	any detail beyond that, I think.	16	the way I would put it, yes.
18	BY MR. FURMAN:	17	Q. I appreciate the fact that your
19	Q. Are you aware that various	18	approval may not have been necessary. You
20	branches of the government eventually	19	would have had knowledge of it before it
21	received advanced copies of No Easy Day	20	went out?
22	before the publication date of	21	A. Yes.
23	September 4th, 2012?	22	Q. There is a reference at the very
24	MS. FOLEY: Object to the form	23	end of the statement that says, "Since it
25	of the question.	24	was announced on August 22nd No Easy Day has
		25	skyrocketed to number 1 at Amazon and Barnes
1	Sevier		
2	THE WITNESS: I saw that written	1	Sevier
3	in media. I have no reason to believe	2	& Noble and garnered increased orders from
4	it was true or not true.	3	accounts across the country."
5	I am aware that the Department	4	Do you see that?
6	of Justice or whoever it is that Jeh	5	A. I do.
7	Johnson represented at that time seems	6	Q. What announcement was made and how
8	to have been in receipt of a copy of	7	was that done on August 22nd?
9	it since you referenced it I think in	8	A. My memory is that Dutton worked
10	that letter that was sent on	9	with a reporter at the New York Times, the
11	August 30th.	10	media reporter at the New York Times, to
12	Beyond that I don't have any	11	announce the book. That is my memory.
13	specific memory or knowledge that I	12	Q. Was there push back after the book
14	can think of other government agencies	13	was announced that you are aware of?
15	having it before publication.	14	MS. FOLEY: Object to the form.
16	BY MR. FURMAN:	15	THE WITNESS: From who? What do
17	Q. Now, if you could turn to page 45	16	you mean by "push back"?
18	of Exhibit 108, in your e-mail dated	17	BY MR. FURMAN:
19	August 28th of 2012 it is addressed to Kevin	18	Q. So let me explain what I mean by
20	Podlaski, it contains what was shared and I	19	"push back."
21	believe it was shared with the media, I am	20	Were you aware that there were
22	assuming that -- actually rather than me	21	some indications from media sources that the
23	assuming, why don't you let me know what	22	government was unhappy with the fact that
24	happened here.	23	Mr. Bissonnette was writing a book about the
25	A. Well, I think it is exactly what	24	killing of bin Laden?
		25	A. I saw it reported in the media

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	Page 169		Page 171
1	Sevier	1	Sevier
2	that certain members of the government in	2	obligations to the government?
3	many cases as I recall unnamed sources had	3	A. I remember it generally as being
4	questions and were unhappy about it	4	whatever government officials he was
5	generally. I think that is a fair	5	speaking to. I can't recall if it was the
6	statement.	6	Department of Defense but, yes, the nature
7	Q. That was in the days that led up	7	of his e-mails were citing those kinds of
8	to the August 30th letter from Jeh Johnson,	8	conversations that he was having.
9	correct?	9	Q. If you could turn to page 51 of
10	A. I think that is right.	10	Exhibit 108, I am referring now to the
11	MS. FOLEY: Object to the form	11	e-mail at the bottom, it is your e-mail to
12	of the question.	12	Mr. Podlaski dated August 29th of, 2012.
13	BY MR. FURMAN:	13	The subject is "NED," all caps,
14	Q. To the best of your memory I	14	"NED Developments 8/29."
15	suppose or knowledge when did the first	15	There is -- there is three bullet
16	indication come in that there was going to	16	points on this e-mail.
17	be some unhappiness with -- from the	17	The first bullet point says "We
18	government with Mr. Bissonnette's book No	18	learned off the record from an AP reporter
19	Easy Day?	19	last night that they had it from a DOD
20	A. I am sorry. Is the question when	20	source that DOD would not seek an
21	was the first indication?	21	injunction."
22	Q. What was the first indication you	22	Can you tell me who that source
23	had?	23	was?
24	A. I think it was e-mails from	24	A. No.
25	journalists around that time.	25	Q. Do you recall how you learned that
1	Sevier	1	Sevier
2	Q. There was a journalist called Mark	2	information?
3	Hosenball. Do you remember him?	3	A. Not specifically.
4	A. I do.	4	Q. There is a reference to the royal
5	Q. Do you know Mr. Hosenball?	5	"we" so was it you or was it someone on your
6	A. I do not.	6	team that learned this information?
7	Q. How do you know of him?	7	A. It was most likely someone else on
8	A. I became aware of him at that time	8	my team who would have conveyed it to me.
9	when he started e-mailing us with questions	9	Q. Why were you telling Mr. Podlaski
10	about this breaking news story.	10	that?
11	Q. Who does he work for or what did	11	A. It looks to me like these bullet
12	he work for at the time?	12	points in my e-mail were about legal reports
13	A. It was one of the wire services.	13	or the reports in the media about our
14	I can't remember if it was Associated Press	14	author's legal exposure which is Kevin
15	or one of the other ones.	15	Podlaski's area of interest in this team so
16	Q. Do you recall that in the e-mails	16	it looks to me like I was just reporting on
17	that Mr. Hosenball had sent to various	17	what I knew.
18	people that were connected with Dutton, I	18	And then it also looks like I had
19	think Mr. Ragone might have been on some of	19	a question at the bottom.
20	them, you may have been at some point	20	Q. Now the second bullet point says
21	receiving them, either forwarded or	21	that, "The book was the lead news item on
22	directly, do you recall that Mr. Hosenball	22	the Today Show." And that the reporter
23	was commenting that the Department of	23	whose last name I won't try to pronounce
24	Defense was unhappy that Mr. Bissonnette was	24	"Reported that the DOD confirms that there
25	writing a book and that he was violating his	25	is no classified information in the book.

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1 Sevier	1 Sevier
2 But that there may be some Navy Seal tactics	2 you referred to earlier and then it would
3 described."	3 have been communicated to our customers by
4 Do you see that?	4 the sales reps who work in the offices.
5 A. I do.	5 Q. There was an original September 11
6 Q. How did you learn that	6 on sale date, correct?
7 information?	7 A. That's right.
8 A. By watching The Today Show.	8 Q. When -- who devised the
9 Q. So you saw Jim M. speak on this?	9 September 11 on sale date?
10 A. Mikleshevski, yes, I did.	10 MS. FOLEY: Asked and answered.
11 Q. You must know the guy.	11 MR. FURMAN: We never used the
12 A. He is the Pentagon reporter at NBC	12 word "on sale date" so I have to tell
13 for years.	13 you you are wrong.
14 Q. So you basically watched it like	14 I don't mind your objection but
15 our current President-elect watches the news	15 you are wrong. You got to give me a
16 and talks about it?	16 break here.
17 A. Exactly. We are very similar.	17 MR. JOHNSTON: I will take the
18 Q. I am very up front I do recognize.	18 matter under advisement.
19 The third bullet point, "The book	19 MS. FOLEY: Let me clarify for
20 has now been purchased at a bookstore in	20 the record.
21 defiance of our strict on sale date and	21 Do you use the term "publication
22 media embargo."	22 date" and "on sale date" synonymously?
23 Do you see that?	23 THE WITNESS: Yes, I do.
24 A. Yes.	24 MR. FURMAN: Well, I didn't know
25 Q. Can you tell me what the "strict	25 that. So give me a break. All right.
Page 174	Page 176
1 Sevier	1 Sevier
2 on sale date and media embargo" means?	2 BY MR. FURMAN:
3 A. There are historically two	3 Q. Okay. So let's move on from all
4 different kind of on sale dates that	4 the lawyer hijinks and I need an answer.
5 publishers use.	5 MS. FOLEY: What is the
6 One is referred to often as a soft	6 question?
7 lay down or simply an on sale date as	7 THE WITNESS: What is the
8 opposed to a strict on sale date. And that	8 question?
9 means by agreement with our customers,	9 (Record read)
10 bookstores and retailers that once they	10 THE WITNESS: All of us on the
11 receive the books they are permitted to put	11 publication team in consultation with
12 them out on the shelves on their schedule.	12 the author and his representatives.
13 A strict on sale date is the	13 BY MR. FURMAN:
14 opposite of that. What it sounds like. By	14 Q. So I want to make sure that we are
15 agreement our customers, the retailers, are	15 all on the same page here.
16 not allowed per our agreement to put the	16 When you refer to "publication
17 book out until the on sale date.	17 date," that is synonymous in your mind with
18 Q. What was the strict on sale date	18 "on sale date"?
19 for No Easy Day?	19 A. Yes. I am trying to think of a
20 A. By Wednesday, August 29th it was 9	20 circumstance in which they don't mean the
21 to 4 -- by Wednesday, August 29th, it was	21 same thing and nothing comes to mind right
22 September 4th.	22 now.
23 Q. How did you communicate that	23 Q. There came a point in time when
24 strict on sale date?	24 the September 11 date then moved to
25 A. Well, in the press release that	25 September 4, right?

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1 Sevier	1 Sevier
2 A. Right.	2 Q. Is there a person that was in
3 Q. Who made that decision?	3 charge of that at Penguin during this time
4 A. The same group of people in the	4 in August of 2012?
5 same consultation with the author and his	5 A. Our sales director at that time
6 representatives.	6 was a man named Dick Heffernan.
7 Q. When was that decision made?	7 Q. Dick Heffernan. Mr. -- is
8 A. I believe it was either Friday or	8 Mr. Heffernan still at Penguin?
9 Monday just prior to these e-mails that you	9 A. No.
10 are pointing out to me so that without a	10 Q. Do you know when he left?
11 calendar in front of me I -- I think it was	11 A. Within the last few years. He has
12 either -- actually, let me think.	12 been gone, I don't know, two or three years,
13 Yes. I think it was either the	13 he retired.
14 very end of the week or the very beginning	14 Q. Do you recall who on the team that
15 of the following week right around here so	15 was involved with No Easy Day communicated
16 that would have been the 27th or the 24th.	16 to Mr. Heffernan the change in the
17 I can't recall specifically.	17 publication/on sale date?
18 Q. Why was the publication or on sale	18 A. He would have been involved in the
19 date changed to September 4?	19 decision so it would have been -- I am not
20 A. Because news of the book had	20 sure how to answer that question other than
21 broken that media moment that we referred to	21 he was on the team who was thinking about
22 earlier that we were hoping to control was	22 whether this was a good idea and would have
23 now happening whatever this is about two	23 helped make the decision.
24 weeks, two-and-a-half weeks before the	24 Q. To the best of your knowledge how
25 planned publication date and since media	25 would Mr. Heffernan communicate that change
1 Sevier	1 Sevier
2 publicity and exposure are really	2 in that audible to the sales rep to change
3 significant factors, in fact, the most	3 the publication/on sale date from
4 significant factors in selling a book like	4 September 11 to September 4?
5 this we needed the book to be on sale as	5 A. I don't know what the regular
6 close to the media moment as possible.	6 practices were for how they do that.
7 Q. So when you effectuate the change	7 Q. If I needed to find that out who
8 in the publication/on sale date, you would	8 would I ask?
9 communicate that change in the date to the	9 A. I guess you could ask Dick.
10 sales reps at Dutton?	10 Q. Do you know where Dick is? It
11 A. Right. The Penguin sales reps.	11 sounds like he is retired.
12 Q. The Penguin sales reps. How many	12 A. That is pretty much all I know.
13 are there?	13 Q. He is on a beach somewhere in
14 A. Embarrassingly I am not sure I can	14 Miami?
15 even ballpark that. Off the top of my head,	15 A. Let's hope.
16 50 people who would have been notified.	16 Q. Who is now in charge of the media
17 Q. How did you communicate that	17 department, who has taken Dick's place at
18 directive? Was it a phone call, was it an	18 Penguin?
19 e-mail?	19 A. That is a tough question because
20 A. I wouldn't have been the one to	20 we merged with another company in the
21 communicate it so I don't know exactly.	21 interim and the structure of the sales
22 Q. Who would have communicated that	22 department is completely different.
23 directive?	23 I am not sure there is an exactly
24 A. It would have been the leadership	24 equivalent position to Dick's. He was the
25 in the sales department at Penguin.	25 hardcover sales director at that time. We

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1	Sevier		
2	don't have any such position now.		
3	Q. The reason I am asking these		
4	questions is I would like to get if it		
5	exists a copy of Mr. Heffernan's e-mails if		
6	he has them that relate to the change in the		
7	on sale/publication date from September 11		
8	to September 4 and how he communicated that		
9	to his sales reps. That is what I would		
10	like. But you can't always get what you		
11	would like, you know.		
12	So I want to know how I can do		
13	that if it is possible and do you know how I		
14	would do that?		
15	A. I guess you would have to consult		
16	the documentary record or talk to someone		
17	who was involved in that process.		
18	Q. How would I find that out who was		
19	involved in that process other than Dick		
20	Heffernan?		
21	A. You would have to do some		
22	research, talk to someone perhaps who is in		
23	that department now and ask them to figure		
24	out if there is any record of that.		
25	I can't think of any other easy		
1	Sevier		
2	way to do it.		
3	Q. We will -- that is a homework		
4	assignment for us. I appreciate that.		
5	But to the best of your knowledge		
6	Mr. Heffernan communicated to the sales reps		
7	the change in the publication/on sale -- on		
8	sale date to the sales reps?		
9	MS. FOLEY: Object to the form		
10	of the question.		
11	BY MR. FURMAN:		
12	Q. In one form or another the message		
13	was communicated to the sales reps that the		
14	date of publication and on sale date		
15	changed -- had changed to September 4th?		
16	A. Yes. That had to have happened.		
17	Q. Okay. And you are aware that it		
18	did, correct?		
19	A. Yes.		
20	Q. Do you know how the sales reps		
21	communicate that to the various retailers?		
22	A. Not specifically beyond that it is		
23	through however whatever means they usually		
24	speak with their counterparts at the		
25	retailers, telephone, e-mail, I have no		
1	Sevier		
2	idea.		
3	Q. Okay. And on -- you pointed this		
4	out to me so I will ask the question.		
5	You had asked Mr. Podlaski to		
6	comment on Navy Seal tactics from an NBC		
7	comment.		
8	Do you see that?		
9	A. I do.		
10	Q. Did you read his response?		
11	A. I am sure I did then. I will read		
12	it again now.		
13	Okay.		
14	Q. In your response after having read		
15	that was it you didn't think it would amount		
16	to much, you said that in your e-mail		
17	response to him on that day?		
18	A. It looks like it, yes.		
19	Q. Do you feel that way today?		
20	A. Yes. I am no expert but that is		
21	my -- that is how I feel.		
22	Q. Just getting back to		
23	Mr. Heffernan, do you know who he reported		
24	to, who his supervisors were at the time in		
25	2012?		
1	Sevier		
2	A. I don't really remember. He may		
3	have reported to David Shanks who was our		
4	CEO.		
5	Q. I don't know if I have a copy of		
6	it here but it is certainly a letter you		
7	received.		
8	I will refer you to the Jeh		
9	Johnson letter dated August 30th of 2012. I		
10	think I have a copy of it here. If I		
11	don't -- here we are. Great memories for		
12	everyone.		
13	It is Exhibit Number 1 of all		
14	things. Right here it is. Everyone's		
15	favorite letter.		
16	MS. HIROSE: Thanks.		
17	BY MR. FURMAN:		
18	Q. Do you remember the day that you		
19	received the letter?		
20	A. Yes.		
21	Q. How did you get it? Was it by		
22	fax, someone delivered it to your office,		
23	how did you get the letter?		
24	MS. FOLEY: Object to the form		
25	of the question.		

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<p>1 Sevier</p> <p>2 THE WITNESS: The first time I</p> <p>3 saw a copy of it was that evening of</p> <p>4 August 30th after I had gotten home</p> <p>5 from work someone called me, I forget</p> <p>6 at this point who it was to say that a</p> <p>7 letter had appeared in the media that</p> <p>8 was addressed to our author.</p> <p>9 So the first time I saw it I</p> <p>10 think was online on a news report that</p> <p>11 evening.</p> <p>12 BY MR. FURMAN:</p> <p>13 Q. What did you do after you saw it</p> <p>14 online?</p> <p>15 A. I don't remember exactly. But I</p> <p>16 know I spoke with my publisher and with</p> <p>17 Christine Ball, our associate publisher, and</p> <p>18 with Elise Cheney, essentially spoke with</p> <p>19 the team to try to make heads or tails of</p> <p>20 this letter.</p> <p>21 Q. At a point in time a lawyer named</p> <p>22 Robert Luskin came into the picture. You</p> <p>23 know who Robert Luskin is?</p> <p>24 A. Yes.</p> <p>25 Q. You met him, correct?</p>	<p>1 Sevier</p> <p>2 I think it was one of the two of them but I</p> <p>3 don't know for sure.</p> <p>4 Q. Peter Ragone is a publicist,</p> <p>5 correct?</p> <p>6 A. I think he is a lawyer.</p> <p>7 Q. Who does he work for?</p> <p>8 A. The last I heard he worked for the</p> <p>9 DiBlasio administration.</p> <p>10 Q. Who did he work for in August of</p> <p>11 2012?</p> <p>12 A. I don't know who -- he was</p> <p>13 associated with a PR firm, a firm that</p> <p>14 included a guy named Mark Fabiani and a guy</p> <p>15 named Lehane, I forget Mr. Lehane's first</p> <p>16 name. I think that firm was called Fabiani</p> <p>17 & Lehane or something like that but I am not</p> <p>18 sure.</p> <p>19 Q. Who hired Fabiani & Lehane?</p> <p>20 A. I think it was Dutton.</p> <p>21 Q. Did Fabiani, Lehane and Mr. Ragone</p> <p>22 all work together on No Easy Day?</p> <p>23 MS. FOLEY: Object to the form</p> <p>24 of the question.</p> <p>25 THE WITNESS: What I recall is</p>
Page 186	Page 188
<p>1 Sevier</p> <p>2 A. I don't know that I ever met him</p> <p>3 in person that I can recall.</p> <p>4 Q. I assume you did.</p> <p>5 You corresponded with him</p> <p>6 obviously by e-mail. I certainly have seen</p> <p>7 that.</p> <p>8 A. Yes.</p> <p>9 Q. Did you ever talk to him on the</p> <p>10 phone?</p> <p>11 A. I was on conference calls that he</p> <p>12 was on.</p> <p>13 Q. When did he first come into the</p> <p>14 picture?</p> <p>15 A. I believe it was, the morning</p> <p>16 after this letter so that would have been if</p> <p>17 my memory serves Friday morning,</p> <p>18 August 31st.</p> <p>19 Q. How did he come into the picture</p> <p>20 to your knowledge?</p> <p>21 A. He was hired by the author.</p> <p>22 Q. Do you know how the author found</p> <p>23 him?</p> <p>24 A. I think that he was referred by</p> <p>25 either Elise Cheney or the -- Peter Ragone.</p>	<p>1 Sevier</p> <p>2 Fabiani being involved and Ragone</p> <p>3 being involved. I don't recall Lehane</p> <p>4 being involved.</p> <p>5 BY MR. FURMAN:</p> <p>6 Q. What did Fabiani and Ragone do for</p> <p>7 Dutton?</p> <p>8 A. They advised us on how to deal</p> <p>9 with the media and they advised the author</p> <p>10 on something.</p> <p>11 Q. Is Mr. Fabiani a lawyer?</p> <p>12 A. I think so but I don't -- you</p> <p>13 would have to confirm that.</p> <p>14 Q. You testified that Mr. Ragone is a</p> <p>15 lawyer?</p> <p>16 A. That is my understanding.</p> <p>17 Q. Were they providing legal advice</p> <p>18 to Dutton?</p> <p>19 MS. FOLEY: Object to the form</p> <p>20 of the question. Lack of foundation.</p> <p>21 THE WITNESS: Sorry. Can you</p> <p>22 ask the question again?</p> <p>23 BY MR. FURMAN:</p> <p>24 Q. Did Fabiani and Ragone provide</p> <p>25 legal services to Dutton in connection with</p>

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1	Sevier	Sevier
2	No Easy Day?	that fair to say?
3	MS. FOLEY: To the extent you	MR. JOHNSTON: Object to the
4	know.	form of the question.
5	THE WITNESS: To the extent that	THE WITNESS: What I meant by
6	I know?	"firestorm" was all of the questions
7	MS. FOLEY: To the extent you	we were getting from the media about
8	know you can answer.	all aspects of the announcement of
9	THE WITNESS: I don't. I don't	this publication and Matt having
10	think so.	written the book.
11	BY MR. FURMAN:	BY MR. FURMAN:
12	Q. Assume that every question I ask	Q. What about Matt having written the
13	you today is to the extent that you know.	book was as you described it a firestorm?
14	That is a safe assumption because if you	A. Sorry?
15	don't know something you will tell me you	Q. What about Matt's writing of the
16	don't know, right?	book leads you to describe it as a
17	A. Yes.	firestorm?
18	Q. So he understands that. I think	A. I described the media, the media
19	we all understand. I am asking you	sort of response as a firestorm. What I
20	questions. You will tell me if you know.	mean by that is beyond the typical response
21	Have -- who at Dutton hired	from media to a book publication.
22	Fabiani and Ragone?	There were questions coming from
23	A. I don't know the answer to that	Mark Hosenball, the journalist who you
24	question in terms of who.	referred to earlier, and others, relating to
25	Q. Did you do it?	our author's legal exposure and, frankly, it
1	Sevier	Sevier
2	A. No.	was outside of our areas of expertise as
3	Q. Would Christine Ball know the	book publishers so we brought them on to
4	answer to that question?	help.
5	A. She might. I don't know. You	Q. Who found Fabiani Lehane?
6	would have to ask her.	A. They were referred by Elise
7	Q. Who did Fabiani and Ragone report	Cheney.
8	to?	Q. What specifically, what
9	A. My memory is -- my understanding	services -- not the type of services, I
10	is that we paid their bills. But they were	asked you that. But what specifically did
11	providing services to this entire team of	they do Fabiani and Mr. Ragone?
12	us, the author, all of us at Dutton in terms	A. They provided advice on how to
13	of how to handle this media firestorm.	deal with the media, respond to the media
14	Q. So were Fabiani and Ragone brought	inquiries that were coming across our desks.
15	in in response to what you just described as	Q. Through -- as you described
16	a firestorm?	through Elise Cheney or Mr. Ragone,
17	A. Yes.	Mr. Luskin appeared on the scene, correct?
18	Q. The firestorm that you are	A. I am sorry.
19	referring to is the issues that related to	Q. It was either through Elise Cheney
20	the publication, sorry. Strike that.	or Mr. Ragone that Mr. Luskin appeared on
21	The firestorm -- let me start	the scene?
22	again.	A. My understanding is one of these
23	The firestorm you are referring to	teams -- one of these people, somebody in
24	relates to the government's reaction to the	the core team referred our author, Matt
25	impending publication of No Easy Day, is	Bissonnette, to Mr. Luskin.

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	Page 193		Page 195
1	Sevier	1	Sevier
2	Q. Did Dutton pay any of Mr. Luskin's	2	A. Not that I can remember.
3	legal fees at any point in time?	3	Q. Have you ever spoken to him
4	A. Not to my knowledge.	4	individually?
5	Q. Did anyone at Penguin or anyone	5	A. Not that I can remember.
6	affiliated with Dutton in any way pay	6	Q. Did Dutton retain any outside
7	Mr. Luskin's fees at any point in time?	7	legal counsel after as you described the
8	A. Not that I can remember, no.	8	firestorm other than Fabiani and Ragone?
9	Q. To the best of your knowledge	9	MS. FOLEY: Objection. I am
10	because I am asking you about something you	10	going to direct the witness not to
11	may not know are you aware whether or not	11	answer unless you know from a source
12	Elise Cheney paid for Mr. Luskin's legal	12	independent from conversations with
13	fees at any point in time?	13	counsel.
14	A. I have no idea.	14	MR. FURMAN: Let me add to -- I
15	Q. What did you understand Mr. Luskin	15	appreciate objections because I do
16	to be doing when he was brought in to this	16	them all the time but the retention of
17	situation?	17	a lawyer is not privileged.
18	A. Advise Matt on how to deal with	18	MS. FOLEY: Right. The
19	these questions about his actions since	19	question -- right, you can ask him did
20	they -- the response conflicted with the	20	he retain a lawyer for Dutton but --
21	legal advice he had gotten up to that point.	21	MR. FURMAN: I am.
22	Q. Mr. Luskin was brought in several	22	MS. FOLEY: I am asking him to
23	days before the on sale/publication date,	23	exclude conversations he had with
24	correct?	24	Dutton's attorney so if he himself
25	A. Yes. That is my memory.	25	retained an attorney he can tell you
1	Sevier	1	Sevier
2	Q. Did anyone at Dutton have separate	2	he retained an attorney.
3	conversations with Mr. Luskin to the best of	3	If he only knows it because --
4	your knowledge including you or anyone else	4	if he only knows information yes or no
5	that you worked with?	5	because of conversations with an
6	A. I don't remember.	6	attorney --
7	Q. At any point in time have you had	7	MR. FURMAN: That is not my
8	separate discussions with Mr. Luskin	8	question. My question is whether
9	including today. At any point in time have	9	Dutton, not just, you know --
10	you ever had a conversation with Mr. Luskin?	10	MS. FOLEY: If you know from
11	A. When you say a "separate"	11	anyone besides talking to an attorney
12	conversation you mean me and Luskin and no	12	at Dutton, if you are able to answer
13	one else on the telephone? What do you mean	13	the question of whether or not Dutton
14	by "separate"?	14	retained any outside counsel in
15	Q. What I mean by "separate" is	15	relation to I guess the Jeh Johnson
16	separate from the team. In other words,	16	letter or the publication of No Easy
17	separate from the team as you described it,	17	Day you can answer.
18	Elise Cheney, Kevin Mauer, Kevin Podlaski,	18	THE WITNESS: I am not going to
19	Matt Owen -- I am sorry, Matthew	19	answer then.
20	Bissonnette, other than that core of people,	20	MS. FOLEY: Okay.
21	sometimes that would include I understand	21	BY MR. FURMAN:
22	Ragone and Fabiani but aside from that core	22	Q. Did -- were you aware of any
23	of people have you had discussions with	23	lawyers acting for Dutton at any point in
24	Mr. Luskin that included only you and maybe	24	time in relation to No Easy Day from
25	some other people from Dutton?	25	August 30th up and through say November 30th

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197-200

	Page 197		Page 199
1	Sevier	1	Sevier
2	of 2012?	2	with the firestorm as it were as you
3	MS. FOLEY: Same direction.	3	described it in connection with No Easy Day.
4	MR. FURMAN: The existence of a	4	I am not asking for communications. I don't
5	lawyer is not privileged. I don't	5	want to know that.
6	want to fight you on it but, you know,	6	I just want to know other than
7	we are -- you have to tell me how the	7	Mr. Luskin if any other lawyers were
8	existence of a lawyer is privileged.	8	involved.
9	MS. FOLEY: If you are asking	9	MS. FOLEY: I am going to object
10	him to tell you information that he	10	and instruct the witness not to answer
11	learned from counsel for Dutton you	11	if the only source of information he
12	are asking him to talk about	12	has is from conversations with
13	privileged conversations.	13	counsel.
14	MR. FURMAN: I am not asking	14	THE WITNESS: Then I am not
15	that. I am asking what he knows. If	15	going to answer.
16	you tell me that he doesn't know that	16	BY MR. FURMAN:
17	lawyers were --	17	Q. Did you ever meet with any lawyers
18	MS. FOLEY: I am telling -- I am	18	who were not employees of Dutton that
19	just directing him to answer the	19	related to No Easy Day?
20	question if he can based on	20	A. Can you repeat the question?
21	information he learned not from	21	MR. FURMAN: Would you mind?
22	talking to a lawyer for Dutton.	22	(Record read)
23	So the first question he said he	23	MS. FOLEY: Did you ever meet
24	can't answer.	24	with who were representing Dutton?
25	MR. FURMAN: But a lawyer for	25	MR. FURMAN: Yes.
	Page 198		Page 200
1	Sevier	1	Sevier
2	Dutton includes a lawyer who is	2	MS. FOLEY: You can answer that
3	hired -- if Winston & Strawn is hired	3	question.
4	to deal with this, right, he is a	4	THE WITNESS: I had a phone
5	lawyer for Dutton so your blanket	5	call.
6	objection and direction to the witness	6	BY MR. FURMAN:
7	is palpably improper.	7	Q. What law firm is that?
8	If you are saying that this	8	A. I don't remember.
9	witness can only have learned that a	9	Q. What is the name of that lawyer?
10	lawyer was retained through -- an	10	A. My vague memory is that the first
11	outside lawyer through a general	11	name -- there were two attorneys, and that
12	counsel of some sort, in-house to	12	their first names were Dean and Susan. I
13	Dutton, and then never had a separate	13	couldn't swear to that.
14	conversation, never learned the	14	Q. Let's use Dean and Susan for now.
15	identity of that person, that is	15	We can always fill in the blanks later.
16	ridiculous. It is an absurd	16	Is there a way that you could
17	objection.	17	search your files and get the real name of
18	I am just asking for the	18	Dean and Susan?
19	existence of something. I don't know	19	A. I can certainly search the file.
20	why I am fighting for this. You know,	20	I don't know if it would be in my files.
21	I am not talking about -- this is not	21	Q. Were Dean and Susan involved in
22	difficult stuff.	22	any conference calls with people other than
23	BY MR. FURMAN:	23	Dutton employees to the best of your
24	Q. I am just asking whether you know	24	knowledge? Were you involved in any
25	if Dutton retained outside counsel to deal	25	meetings or telephone conferences with Dean

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	Page 201		Page 203
1	Sevier	1	Sevier
2	and Susan that involved people outside of	2	possibly be true because it was in direct
3	Dutton?	3	opposition to what we had believed and
4	A. I have no idea. I don't know.	4	what -- the legal advice that Matt got that
5	Q. Do you know whether or not Dean	5	led us to so we were trying to figure out if
6	and Susan and their law firm communicated in	6	it was right.
7	any way with Mr. Luskin?	7	Q. Based on the e-mail that I
8	A. I don't know.	8	referred you to is it fair to say that
9	Q. Were Dean and Susan part of	9	Mr. Bissonnette is telling Kevin Podlaski
10	Mr. Luskin's firm, do you know?	10	for the first time that he signed some
11	A. I don't think they were.	11	documents? This is from the first.
12	Q. Going back to Exhibit 108.	12	MS. FOLEY: Object to the form
13	A. Can we take a two-minute comfort	13	of the question.
14	break?	14	BY MR. FURMAN:
15	MR. FURMAN: Sure.	15	Q. From the first sentence.
16	(Recess)	16	MR. JOHNSTON: Objection.
17	BY MR. FURMAN:	17	Foundation.
18	Q. So in 108, if you can take a look	18	MS. FOLEY: Objection.
19	at page 60.	19	BY MR. FURMAN:
20	A. Okay.	20	Q. I will establish a foundation.
21	Q. This is after the Jeh Johnson	21	Do you know whether or not
22	letter, Matt Bissonnette wrote to you,	22	Mr. Bissonnette signed any nondisclosure
23	copied several others and he was saying he	23	agreements with the government?
24	was in for a meeting and then he referring	24	MS. FOLEY: Object to the form
25	to Kevin Podlaski said, "From the looks of	25	of the question. Lack of foundation.
1	Sevier	1	Sevier
2	the documents apparently I did sign some	2	MR. JOHNSTON: Object. Lack of
3	sort of SAP program documents."	3	foundation.
4	Do you see that?	4	THE WITNESS: Do I know that
5	A. Yes.	5	today? Yes.
6	Q. Did you know what he was referring	6	BY MR. FURMAN:
7	to?	7	Q. Because you got the Jeh Johnson
8	A. He is referring to the documents	8	letter, right?
9	that are -- were attached to Jeh Johnson's	9	A. For various reasons I know that
10	letter.	10	now.
11	Q. Once you learned that there were	11	Q. Okay. But the Jeh Johnson is one
12	some agreements that were signed by	12	sure fire way you would know it, right?
13	Mr. Bissonnette that related to his	13	A. Well, no, I don't know what these
14	obligations to the government did you have a	14	documents mean. Some of them were actually
15	discussion about what to do next with	15	written as I recall with classified symbols
16	anyone?	16	of things that aren't even in the English
17	A. Yes. We had many discussions.	17	language so.
18	Q. Who did you speak with?	18	No. This means nothing to me but
19	A. I spoke with Brian Tart, my	19	I have come to learn in the month and year
20	publisher, with Christine Ball, with the	20	since this all happened that apparently Matt
21	whole team. We all talked about it.	21	did sign agreements since they took all of
22	Q. The question was whether -- what	22	his money away.
23	was the question? What was the decision	23	Q. I will use the term agreements,
24	tree at that point?	24	not disclosure agreements just so that I can
25	A. The first question was could this	25	ask you questions. I appreciate that you

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	Page 205		Page 207
1	Sevier		
2	know fine points of what that means.	1	Sevier
3	A. Right.	2	paragraph.
4	Q. But were you aware before	3	It states, "Further public
5	August 30th of 2012 that Matt Bissonnette	4	dissemination of your book will aggravate
6	had signed any nondisclosure agreements with	5	your breach in violation of your
7	the government?	6	agreements."
8	A. I knew only what Matt told me	7	Do you see that?
9	which as I recall was, I am not sure what I	8	A. Yes, I do.
10	signed, I signed documents when I joined the	9	Q. Now was part of the decision for
11	military, he made statements of that nature	10	Dutton whether or not on August 30th to
12	to me and not being an expert on what one	11	change the on sale and publication date
13	signs joining the military or any other	12	based on this letter?
14	point I didn't know nor did I have any	13	A. No. That decision had been made
15	reason to know what those agreements would	14	before we got this letter.
16	have been.	15	Q. Now you -- previously Dutton had
17	Q. All right.	16	made the decision to change the on sale and
18	Now, I asked you about a decision	17	publication date from September 11th to
19	tree. What decisions, if any, did Dutton	18	September 4th, correct?
20	have to make at that point in time on	19	A. That's right.
21	receipt of the August 30th letter?	20	Q. Upon receipt of this August 30th,
22	A. We had to decide whether to	21	2012 letter did Dutton consider changing the
23	proceed with our meticulously planned and	22	on sale and publication date to a point in
24	very robust media schedule for the book's	23	time after September 4th of 2012 given this
25	publication and if we were going to alter it	24	letter from Jeh Johnson?
1	Sevier	25	A. I don't remember that being a
2	in what way we were going to alter it to		
3	protect our author.		
4	We were very concerned at that	1	Sevier
5	time about Matt's security, so we were	2	conversation at all because it was
6	making decisions about paying for personal	3	impossible at that point to make such a
7	security for him and I think if I remember	4	decision as far as we were concerned.
8	right for his family.	5	Q. I want to talk about impossibility
9	There were lots of decisions being	6	because you said as far as Dutton was
10	made.	7	concerned it was impossible, is that --
11	Q. In the letter, Exhibit 1, if you	8	A. Yes. The books were out,
12	could turn to it, I want to focus your	9	reporters had legally or against our embargo
13	attention, it is right in front of you, to	10	obtained copies in bookstores I believe at
14	the second full paragraph and --	11	this point. The book was published. I
15	MR. JOHNSTON: I apologize. I	12	mean, yes, it had not adhered to our
16	missed the reference. Where are we?	13	publication date and our on sale date, even
17	MR. FURMAN: We are on Exhibit	14	the revised 9/4, but, as I said before, a
18	Number 1, Jeh Johnson's letter.	15	half million copies what ultimately became,
19	MR. JOHNSTON: Sorry.	16	you know, the biggest book of the moment
20	MR. FURMAN: It is okay. I am	17	were already out there in the world. People
21	trying to deceive you like	18	had their hands on them.
22	intentionally.	19	The government appears by this
23	BY MR. FURMAN:	20	letter to have bought a copy of his book or
24	Q. We are in the second paragraph and	21	otherwise found a copy of the actual book so
25	we are at the last sentence of the second	22	the book was published, it was out.

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Page 209	Page 211
<p>1 Sevier 2 public dissemination." 3 Do you see that? 4 A. Yes, I do. 5 Q. Could Dutton at that point in time 6 changed its instruction to the various 7 retailers through its sales rep, through 8 Mr. Heffernan to change the publication and 9 on sale date to a future date at that point 10 in time, yes or no? 11 A. Practically speaking? 12 Q. I am not asking you practically. 13 Whether they could do it, yes or no? 14 A. Whether they could have asked -- 15 they could have said, sorry, it is not on 16 sale 9/4. Instead the publication date is 17 some other date. 18 I suppose hypothetically I don't 19 see why they couldn't make that request. 20 Q. The way that Dutton executes its 21 on sale date and publication date is by 22 communicating to its retailers the date that 23 it wishes to do it and in your terms it was 24 a strict date. Correct? 25 A. That's right.</p>	<p>1 Sevier 2 thousands of retailers across the 3 country who would then have to ingest 4 that information, discuss it with the 5 many probably tens of thousands of 6 book sellers who would have been in 7 charge of putting the books out over 8 the weekend so they were there for 9 that sale date on Tuesday morning when 10 they opened. 11 That is what I mean when I say I 12 don't think practically we could have 13 so I don't recall after this letter 14 came that we had any discussions about 15 it. 16 BY MR. FURMAN: 17 Q. I appreciate that you are 18 providing me with the -- some practical 19 considerations that you believe would have 20 happened and I am not asking you about that 21 so I am going to move to strike your answer 22 as not responsive to my question. 23 My question to you is upon receipt 24 of this letter and you can answer this 25 simply just yes or no whether or not Dutton</p>
Page 210	Page 212
<p>1 Sevier 2 Q. And there was nothing preventing 3 other than commercial aspects which we will 4 get into but there was nothing preventing 5 Dutton from making a decision to change the 6 date from September 4th of 2012 to change 7 the communication at least to the retailers 8 to a later date for its publication and on 9 sale date given Mr. Johnson's letter, 10 correct? 11 MS. FOLEY: Object to the form 12 of the question. Asked and answered. 13 THE WITNESS: The horse had left 14 the barn is the only way I can put 15 it. 16 By Friday morning which is one 17 half business day before the book's on 18 sale date on Tuesday, the 4th, which 19 the day after the holiday weekend and 20 the early close by Penguin on Friday, 21 the 31st, a decision like that would 22 have had to have been made in the 23 three, three-and-a-half hours we were 24 open for business on Friday and then 25 communicated in some way to many</p>	<p>1 Sevier 2 could have changed the on sale and 3 publication date? 4 MS. FOLEY: Object to the 5 question. Asked and answered. 6 THE WITNESS: No is my answer. 7 BY MR. FURMAN: 8 Q. Your answer is that it would have 9 been impossible for Mr. Heffernan to 10 communicate -- let me backtrack and let me 11 just ask a different question. 12 The communications by 50 sales 13 reps, they would either take place either by 14 phone call or e-mail to the best of your 15 knowledge? 16 A. Most likely that is right, yes. 17 Q. Are you saying that that 18 communication couldn't happen in one single 19 day? 20 MS. FOLEY: Objection to the 21 form of the question. 22 BY MR. FURMAN: 23 Q. I am talking about the 24 communication. I am not talking about the 25 practical aspects of it. That's -- you don't</p>

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	Page 213		Page 215
1	Sevier	1	Sevier
2	know, you are not a retailer, right?	2	2012 --
3	A. No, I am not although I have	3	A. Can I just point out that you are
4	worked in bookstores.	4	talking about a time before we received the
5	Q. So if you are -- you have no	5	Jeh Johnson letter so do you actually mean
6	knowledge of what Barnes & Noble in Union	6	August 31st or do you mean August 30th
7	Square would have done on September 4th at	7	before we received this letter?
8	4:59 p.m. if they got the communication from	8	Q. Yes. That is a fair point, Mr.
9	Dutton stop the presses, don't release the	9	Sevier.
10	book. You don't know what they would have	10	So maybe I should ask you this.
11	done, right?	11	Do you know when this fax, if it was
12	A. No. I have two decades of	12	received by fax, was received by Mr. Gigante
13	experience in thinking about issues and how	13	at Penguin?
14	these things work but, no, I don't know how	14	A. I know exactly when the first
15	they would have done it or what they would	15	Penguin employee received this fax because
16	have done or what they are capable of.	16	it was me.
17	Q. When I take that one bookstore,	17	Q. When was that?
18	which is the one I know, and I then apply	18	A. It was the evening after hours on
19	that same question to every bookstore that	19	August 30th sometime after 8:00 p.m. after
20	would have been receiving copies of this	20	we read it in the media and saw that it was
21	book, you don't know one way or another, do	21	addressed to our author, in care of Alex
22	you, whether they could have followed,	22	Gigante. I took a cab back to the office
23	adhered to a directive from Dutton, correct?	23	and found the fax.
24	You are speculating but you don't know?	24	Q. So you got to the office pretty
25	MS. FOLEY: Object to the form	25	late on August 30th and saw the fax sitting
	Page 214		Page 216
1	Sevier	1	Sevier
2	of the question.	2	there on the fax machine?
3	THE WITNESS: In my opinion	3	A. That's right.
4	based on my experience --	4	Q. 10:00 at night that evening.
5	BY MR. FURMAN:	5	I appreciate that Dutton can't
6	Q. I am not asking your opinion	6	tell Barnes & Noble on Union Square what to
7	because you have to answer my questions.	7	do, a sales clerk can do whatever they like.
8	A. Can you repeat the question?	8	But as far as Dutton's ability to control
9	Q. I am asking whether you know.	9	its own destiny, at that moment when you
10	A. Can you repeat the question	10	received that fax as the editor in chief of
11	please?	11	Dutton could you have then effectuated a --
12	Q. Sure.	12	an order that would have directed the
13	Take what I just asked you about	13	stopping and altering of the September 4th,
14	Union Square at 3:59 p.m. on August 30th,	14	2012 on sale publication date?
15	2012 whether every single bookstore	15	A. No. I did not have that power.
16	throughout the country and throughout the	16	Q. Who had that power?
17	world received the same directive from	17	A. My feeling is that the only person
18	Penguin/Dutton, stop, don't sell the book,	18	who would have been empowered to make a
19	you don't know whether or not they could	19	decision like that would have been our CEO,
20	have followed through on that directive, yes	20	David Shanks.
21	or no?	21	Q. Were you able to communicate with
22	A. No.	22	Mr. Shanks?
23	Q. If at -- I keep changing the time	23	Can you spell that?
24	but I am just trying to make a point here.	24	A. S-H-A-N-K-S.
25	At 2:59 p.m. on August 30th of	25	Q. I am assuming you didn't

BENJAMIN SEVIER
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<p>1 Sevier 2 communicate with Mr. Shanks that evening, 3 did you? 4 A. I don't remember speaking with 5 David that evening, no. 6 Q. Did you speak to David at any 7 point in time before September 4th, 2012? 8 A. I don't have any recollection of a 9 conversation with him. 10 Q. Could you have reached out to 11 Mr. Shanks at any point in time from 12 September 30th that evening up until 13 September 4th, 2012 if you wanted to? 14 A. August 30th. 15 Q. August 30th of 2012 to 16 September 4th, 2012? 17 A. I would have been going outside 18 the chain of command. He was three -- at 19 least three levels above me. It would have 20 been highly unusual. 21 Am I capable of making a phone 22 call, yes. 23 Q. Let's take the chain of command. 24 You said you are incapable of 25 making that decision.</p>	<p>Page 217</p> <p>1 Sevier 2 of that. 3 If it were to come up in that 4 circumstance I am telling you practically 5 speaking it would have been dismissed 6 immediately as impossible. 7 Q. Now what if Mark Owen -- Matthew 8 Bissonnette, on August 30th that evening, 9 said to you "Hey, Ben, stop publication of 10 the book," what would have happened? 11 MS. FOLEY: Objection. Calls 12 for speculation. 13 MR. FURMAN: Obviously. 14 THE WITNESS: I suppose I would 15 have relayed that communication to the 16 chain of command I referred to 17 earlier. 18 BY MR. FURMAN: 19 Q. And what if at any point in time 20 before September 4th of 2012 Mr. Luskin had 21 advised Mr. Owen/Mr. Bissonnette that the 22 book should not be published what you would 23 have been able to do? 24 MS. FOLEY: Objection. Calls 25 for speculation.</p>
<p>1 Sevier 2 Who in the chain of command at 3 Dutton would you have spoken to? Who would 4 you have spoken to to comply with 5 Mr. Johnson's letter of August 30, 2012? 6 A. Well, my boss, the publisher, 7 Brian Tart would have been my first phone 8 call. 9 Q. Did you speak with Mr. Tart about 10 complying with the August 30th, 2012 letter 11 from Jeh Johnson? 12 A. I am not sure what you mean by 13 "comply." 14 Q. I am talking about the language 15 that says, "Further dissemination of the 16 book will aggravate your breach in violation 17 of your agreements." 18 A. The letter is addressed to Mark 19 Owen, not to Penguin, first of all, but 20 setting that aside did I have a conversation 21 with Brian about finding some way to get 22 around as I have said the impossible, 23 practical considerations to somehow stop 24 publication of book that was essentially 25 already published, I have no specific memory</p>	<p>Page 218</p> <p>1 Sevier 2 THE WITNESS: I feel I have 3 answered that question already. It 4 wouldn't have been any different from 5 what I said previously. 6 BY MR. FURMAN: 7 Q. Did anyone tell you not to publish 8 the book? 9 A. Not that I recall. 10 Q. Did Mr. Bissonnette say stop 11 publication of the book? 12 A. Not that I recall. 13 Q. Did Mr. Podlaski say don't publish 14 the book? 15 A. No, he did not. 16 Q. Did Mr. Luskin say don't publish 17 the book? 18 A. Not that I recall. 19 Q. Did either Mr. Fabiani or 20 Mr. Ragone say don't publish this book? 21 A. Not that I recall. 22 Q. So the book was published on 23 September 4th of 2012 pursuant to the on 24 sale and publication date, correct? 25 MS. FOLEY: Object to the form</p>

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Page 221	Page 223
<p>1 Sevier 2 of the question. Mischaracterizes the 3 testimony. 4 MR. JOHNSTON: Or alternative 5 objection, asked and answered. 6 THE WITNESS: The book was on 7 sale on September 4th, 2012. 8 BY MR. FURMAN: 9 Q. Whose decision was it to proceed 10 with the publication and on sale date of 11 September 4th after the September 30th, 2012 12 letter? 13 A. The August 30th, 2012 letter as I 14 have said, we didn't make that decision. 15 The book was essentially already published 16 before we received this letter. 17 Q. If -- in Exhibit 108 turn to page 18 87. I am referring to an August 31st e-mail 19 at 12:00 p.m. That is the Friday. 20 You were working on that day, 21 correct? 22 A. Yes, I was. 23 Q. I take it to the best of your 24 knowledge Mr. Heffernan was working on that 25 day?</p>	<p>1 Sevier 2 I don't have a specific memory of it right 3 now. 4 Q. Since the letter as you described 5 it, the August 30th letter by Mr. Johnson 6 was directed to the author and not to Dutton 7 why were you included in the response in the 8 formulation of the responsive letter? 9 A. I guess it would have been at the 10 author's request as we looked at a previous 11 e-mail that I was gathering this team 12 including the lawyers for a call at 10:00 13 a.m. this morning where I believe we 14 discussed this letter at Matt's request. 15 Q. In your e-mail referring to the 16 letter you wrote that it was the publisher's 17 priority to get that letter out. Why was it 18 a priority of Dutton? 19 A. Because we were very concerned for 20 our author. And we wanted -- we still 21 believed at this point that we were in the 22 right and that Matt had done nothing wrong 23 per Podlaski's advice and his continuing 24 advice and we thought we were correcting the 25 record by getting a letter like this out</p>
Page 222	Page 224
<p>1 Sevier 2 A. I actually have no idea. It would 3 be fairly typical of Dick to have taken that 4 day off for the holiday. 5 Q. The sales force people were there? 6 A. Some, others would have been away 7 for the holiday weekend. 8 Q. Your e-mail of that day at 12:00 9 p.m. says "The publisher's priority is to 10 get that strong letter out as soon as 11 possible." 12 Do you see that? 13 A. I do. 14 Q. And the "strong letter" I am just 15 going to refer you to page 89 of Exhibit 16 108. 17 A. Okay. 18 Q. Is that the strong letter you are 19 referring to in your e-mail? 20 A. I believe it is. 21 Q. Exhibit -- page 89 of Exhibit 108, 22 the letter written by Mr. Luskin, did you 23 review it before it was sent out to 24 Mr. Johnson? 25 A. I think we did. I think I did but</p>	<p>1 Sevier 2 that said, sorry, Mr. Johnson, you have your 3 facts wrong. 4 Q. I understand that you mentioned 5 that you were concerned for the author but 6 your relationship with the author was based 7 on a contract, correct? 8 A. That was one of the aspects of our 9 relationship. 10 Q. As it relates to the book other 11 than your personal relationship with 12 Mr. Bissonnette, putting that aside, I am 13 talking about your -- Dutton's commercial 14 relationship with Mr. Bissonnette was via a 15 contract, right? 16 A. Yes, but the contract in the 17 publishing business does not always control 18 our actions. It is a business full of human 19 beings. I mean we cared a lot about our 20 author. 21 Q. So is it fair to say that at least 22 from a commercial perspective that the 23 publisher has an interest in the book being 24 published, right? You wanted to make money? 25 A. That is fair.</p>

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BISSONNETTE vs PODLASKI

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	Page 225		Page 227
1	Sevier	1	Sevier
2	<p>Q. Okay. And so when you talk about</p> <p>3 the priority is it only because of your</p> <p>4 concern for Mr. Bissonnette's well being or</p> <p>5 is it also because of the publisher's</p> <p>6 priority as it relates to its commercial</p> <p>7 success?</p> <p>8 MS. FOLEY: Asked and answered.</p> <p>9 BY MR. FURMAN:</p> <p>10 Q. I didn't ask him that.</p> <p>11 You can answer it. Mr. Sevier,</p> <p>12 you can answer it.</p> <p>13 A. I am fairly sure I already</p> <p>14 answered that question.</p> <p>15 Q. Like having a battle over nothing.</p> <p>16 You can answer the question.</p> <p>17 MS. FOLEY: You can answer the</p> <p>18 question.</p> <p>19 THE WITNESS: Can you repeat the</p> <p>20 question then, I have forgotten it.</p> <p>21 (Record read)</p> <p>22 THE WITNESS: This letter as far</p> <p>23 as I can tell is in response to a</p> <p>24 letter from Jeh Johnson, the U.S.</p> <p>25 Government to Mark Owen about his</p>	<p>2 out.</p> <p>3 Q. What is the strategy behind</p> <p>4 getting the letter out. What is the purpose</p> <p>5 of it?</p> <p>6 A. To correct the misinformation that</p> <p>7 we felt and were being told by Kevin</p> <p>8 Podlaski was out there in the media reports</p> <p>9 and in Jeh Johnson's letter.</p> <p>10 Q. Mr. Luskin wrote that letter,</p> <p>11 correct, the responsive letter which you are</p> <p>12 referring to as on page 89 and 90?</p> <p>13 A. His name is at the bottom of it.</p> <p>14 Q. To the best of your knowledge</p> <p>15 Mr. Luskin was representing Matt</p> <p>16 Bissonnette, correct?</p> <p>17 A. Absolutely.</p> <p>18 Q. To the extent that you know it</p> <p>19 understood Mr. Luskin had full access to his</p> <p>20 client, right?</p> <p>21 A. Yes.</p> <p>22 Q. So the information and the</p> <p>23 response to Mr. Johnson's letter of</p> <p>24 August 31st of 2012, this is Mr. Luskin's</p> <p>25 work isn't it, fair to say?</p>	Page 227
1	Sevier	1	Sevier
2	personal legal liability.	2	MR. JOHNSTON: Object to lack of
3	Nobody at this point had	3	foundation.
4	addressed Penguin officially in any	4	THE WITNESS: I don't know who
5	way.	5	he might have had help him draft it
6	We had no communication from the	6	but it is on his letterhead and it has
7	government asking us to take any	7	his name at the bottom of it.
8	action and so I say -- in the e-mail	8	BY MR. FURMAN:
9	where I say the priority is to get	9	Q. If you could turn to page 66 of
10	that letter out is about our	10	the document 108.
11	relationship with Matt and wanting him	11	There is an e-mail dated
12	to be protected by his high power	12	September 7th of 2012 at 10:49 p.m. and it
13	attorney who has come on board hours	13	is from -- 10:49 a.m., excuse me. It is
14	earlier.	14	from Mr. Luskin and addressed to several
15	BY MR. FURMAN:	15	people including you.
16	Q. In that e-mail of August 30, 31st	16	And it states, "Agreed with
17	at 12:00 p.m. you wrote that we have --	17	Kevin"-- "Agree with Kevin the ball is very
18	A. Which e-mail?	18	conspicuously in DOD's court in their
19	Q. Of course. Page 87.	19	silence in response to our invitation for
20	A. Okay.	20	evidence that Mark signed an SCI
21	Q. You write, "We have no further	21	applicable," it is misspelled but he meant
22	updates except to execute the strategy we	22	to say "applicable to Neptune is truly
23	agreed on this morning."	23	deafening. I think we are just fine with
24	What strategy are you discussing?	24	the status quo. If this is the best they
25	A. I think it was getting the letter	25	can come up with and they are circulating it

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Page 229	Page 231
1 Sevier	1 Sevier
2 publicly rather than as a response to us	2 something there. I really did.
3 directly we are doing just fine."	3 BY MR. FURMAN:
4 Do you see that?	4 Q. Was there -- Mr. Sevier, was there
5 A. Yes, I do.	5 anything in the contract that governed your
6 Q. Is this advice that Mr. Luskin is	6 relationship between Dutton and the author
7 giving you?	7 that would have prevented you from changing
8 A. I would have to read the chain of	8 the publication date from September 4th of
9 e-mail in the context around it so to really	9 2012 to a later date in view of the
10 answer that question.	10 August 30th, 2012 letter?
11 Q. Feel free to do that.	11 A. Nothing comes to mind. I would
12 A. Okay. This looks like a piece of	12 have to read the whole contract to answer
13 advice to the whole team working on Matt's	13 that definitively.
14 behalf.	14 Sometimes authors have approval
15 Q. The reason I am asking that	15 over a publication date. I don't know if
16 question is because the e-mail that precedes	16 that is true in this case. So in that case
17 it on page 66 at 10:41 a.m. is from you and	17 we would have had to consult with the author
18 you correct an e-mail address so that	18 and get his okay. Other than that, I can't
19 Mr. Luskin is involved and that is why I am	19 think of a contractual reason that we would
20 asking you since you -- you were the only	20 not have been able to make a decision on
21 person that -- of the group who wanted	21 that.
22 Mr. Luskin's involvement apparently I want	22 Q. Are you aware whether or not a
23 to know why that is.	23 clause was proposed in the contract, not
24 MR. JOHNSTON: Object to the	24 accepted but proposed, that would have
25 form of the question.	25 protected the author if the publisher chose
Page 230	Page 232
1 Sevier	1 Sevier
2 THE WITNESS: I disagree with	2 to submit the book for a prepublication
3 that contention completely.	3 review?
4 BY MR. FURMAN:	4 A. I am sorry. Can you repeat the
5 Q. Okay. So explain to me. Maybe I	5 question?
6 am misinterpreting.	6 Q. Sure.
7 A. The way I see it I think he had	7 Are you aware of whether or not
8 misspelled Mr. Luskin's name in a previous	8 there was a proposal that emanated through
9 e-mail and so I was -- I noticed that. As	9 Mr. Podlaski through the contract that would
10 an editor I look for things like	10 have protected the author if the publisher
11 misspellings and so I corrected it because	11 had chosen to submit the book for a
12 he had intended Luskin to be on it.	12 prepublication review?
13 Q. Why? So is that the reason why	13 A. I have no memory of that.
14 because of a misspelling?	14 Q. If I told you that that was
15 A. As far as I know. I can't see the	15 proposed would that -- is it that one way or
16 misspelling now but that happens frequently	16 another would that surprise you?
17 in group e-mail chains and that is typically	17 A. It wouldn't be particularly
18 what I do.	18 surprising, no.
19 Q. That is a good spot because I	19 Q. Do you have any recollection of
20 think you are right, there is a missing G.	20 rejecting that proposal?
21 A. There you go.	21 A. I don't.
22 Q. I can't believe it.	22 Q. I am going ask you some questions,
23 MR. JOHNSTON: I am going to	23 you may not have the answer to them but I
24 miss my flight over that.	24 would like to know if you don't have the
25 MR. FURMAN: I thought I had	25 answer and for the purposes of saving some

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BISSONNETTE vs PODLASKI

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Page 233	Page 235
1 Sevier 2 time let me know the best source for finding 3 this information. 4 Are sales of No Easy Day 5 continuing as of today? 6 A. Yes. 7 Q. How is that being tracked so I 8 know the source of finding that information. 9 Is that through Elise Cheney so if a sale 10 took place over the Christmas holiday Elise 11 Cheney would know that information? 12 A. Well, Elise Cheney's royalty 13 statements would be behind real time sales 14 by as much as six months depending on where 15 today falls in her royalty cycle. 16 I don't have that information but 17 she would have royalty statements complete 18 through the last cycle which is up to six 19 months ago. 20 Q. Have you had any projections made 21 for any future book sales of No Easy Day? 22 A. Have I had any made? 23 Q. Yes. 24 A. I would say, no to that. 25 Q. Would that even be possible to do?	1 Sevier 2 educated judgments about what you 3 think a book will sell. In fact we do 4 that everyday in our business because 5 it is our job to keep enough books in 6 stock at retailers in order to meet 7 demand. And so that is something that 8 we do all the time. 9 BY MR. FURMAN: 10 Q. Has that been done for No Easy 11 Day? 12 A. Sure. I guess in that respect we 13 have the book modeled at various retailers 14 to make sure that it is in stock and 15 available to buy when people want it. 16 Q. How would I get a copy of that 17 modeling or information about that modeling? 18 A. I actually do not know the answer 19 to that question. Some computer system has 20 that I suppose. 21 Q. I am sorry? 22 A. Some computer system would have 23 that I suppose but I don't have access to it 24 as far as I know. 25 Q. We know that computers are
Page 234	Page 236
1 Sevier 2 A. I mean you can model sales and you 3 can come up with estimates and -- 4 Q. How would you do that? 5 A. You take into account the current 6 rate of sale, rates of sale of other books 7 that are either similar or for the same 8 audience over time and then you make a 9 judgment based on whatever knowledge you 10 have, belief you have about book publishing 11 and the retail environment and the interest 12 of the American public and you come up with 13 an estimate. 14 Q. And so it would not be based on 15 hard information. It would be based on some 16 experience level and some guesswork in terms 17 of trying to determine what interest would 18 be in the future in a particular book that 19 has been out on the shelves for several 20 years? 21 MR. JOHNSTON: Object to the 22 form of the question. 23 THE WITNESS: I wouldn't use the 24 word "guesswork." 25 I would say you can make	1 Sevier 2 complicated things but who at Dutton would 3 know where on the computer system I would 4 find that if I were to ask for it? 5 A. Our sales department is in charge 6 all of that kind of stuff so the Penguin 7 sales department would be the ones who are 8 controlling those models. 9 Q. If you wanted to find that out who 10 would you call at the sales department? 11 A. I would start with one of our in 12 print sales directors. 13 Q. Who would you call? 14 A. Probably a guy named Dandy Dudley. 15 Q. Dandy? 16 A. Andy Dudley. 17 Q. Dudley, D-U-D-L-E-Y? 18 A. Yes. 19 Q. Anyone else? If Andy is on 20 vacation who else would you call? 21 A. I guess I would call his boss, the 22 group sales director. His name is Loren 23 Monaco. 24 Q. They work for Penguin? 25 A. That's right.

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Page 237		Page 239
1 Sevier		1 Sevier
2 Q. So their employer is Penguin, not		2 area.
3 Dutton?		3 Did there come a point in time
4 A. Right. Penguin Random House if		4 after August 30th, 2012 when you or anyone
5 you really want to get specific.		5 at Dutton came to the determination that the
6 Q. And so if I were to ask them for		6 book should have been submitted for
7 any modeling that they have for projected		7 prepublication review?
8 future sales of No Easy Day, if you were me		8 A. I wouldn't say anybody came to a
9 you would call them?		9 determination about that, no.
10 A. That is my best guess. I can't		10 Q. If the book was submitted for a
11 promise they can deliver it for you but that		11 prepublication review do you know one way or
12 is who I would start with if it were me and		12 another what would have happened?
13 I were trying to accomplish that.		13 A. In what sense?
14 Q. Are you aware in one way or		14 Q. What the government would have
15 another other than learning it through		15 decided.
16 lawyers whether Mr. Bissonnette forfeited		16 A. No.
17 any of the royalties from No Easy Day to the		17 MR. FURMAN: All right. I have
18 government?		18 no further questions.
19 A. Yes. He told me.		19 We are going to follow up with
20 Q. When did he tell you this?		20 some -- we will talk with your lawyers
21 A. You know that settlement was in		21 for some of the information we were
22 progress for so long that I can't even		22 looking for in terms of book sales and
23 recall when the final word came down about		23 other things that were on the record
24 that.		24 but I want to thank you, Mr. Sevier,
25 Q. Did the government, I don't need		25 for your time and your patience with
1 Sevier		1 Sevier
2 to know -- go into details about any		2 us in this deposition. Thank you.
3 attorney-client information but do you know		3 THE WITNESS: You are welcome.
4 one way or another if the government		4 EXAMINATION
5 investigated Dutton in connection with the		5 BY MR. JOHNSTON:
6 release of No Easy Day?		6 Q. Mr. Sevier, there are a few
7 A. I don't know. I have never seen		7 subjects that I want to ask you, kind of
8 any evidence or heard that they did.		8 isolated questions on some, probably be
9 Q. Did Dutton forfeit any profits or		9 jumping around a little bit.
10 make any settlement with the government in		10 A. Okay.
11 connection with the release of No Easy Day?		11 Q. With regard to the contract with
12 A. No.		12 Mr. Bissonnette my understanding is that
13 Q. Is Dutton still selling and		13 through you -- through the contract
14 earning income based on No Easy Day?		14 negotiations Dutton agreed to pay a million
15 A. Yes.		15 dollar advance for this book, correct?
16 Q. Do you know any round number for		16 A. That's right.
17 the last year, 2016?		17 Q. At the time that you agreed to pay
18 A. I would have to look it up. I		18 that million dollar advance did you know
19 don't know the number.		19 whether or not the book would be submitted
20 MR. FURMAN: I think I am done.		20 to a prepublication review?
21 I just want to step outside with		21 A. No, we did not.
22 Izabell and ask her a few questions.		22 Q. Did you pay that advance with the
23 (Recess)		23 understanding that it might be submitted to
24 BY MR. FURMAN:		24 a prepublication review and the delay
25 Q. Just a few more questions on one		25 intendant to such a review?

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<p>1 Sevier 2 MS. FOLEY: Objection to the 3 form of the question. 4 THE WITNESS: I would say we 5 entered into the agreement knowing 6 that it might have to go through 7 review. 8 BY MR. JOHNSTON: 9 Q. Ultimately a paperback version of 10 the book was also published, correct? 11 A. Yes. 12 Q. My understanding is that the 13 paperback version came out later than is 14 normal, is that understanding accurate? 15 A. Yes. It came out later than a 16 typical book's public reprint -- a paperback 17 reprint would have come out. Yes, that's 18 right. 19 Q. Why is that? 20 A. That determination would have been 21 made by the sales department based upon 22 factors like the rate of sale of hardcover, 23 I think that that is the best answer I can 24 give you. 25 Q. Okay. Let me ask this. Is the</p>	<p>Page 241 1 Sevier 2 rights for the book had resulted in the 3 preparation of a movie, would that have had 4 an impact on book sales? 5 MR. FURMAN: Objection. 6 THE WITNESS: Yes. 7 BY MR. JOHNSTON: 8 Q. If he had been able to promote the 9 book No Easy Day in connection with the 10 publication of his second book No Hero would 11 that have likewise had an impact on book 12 sales? 13 A. Yes. 14 Q. And with regard to all of those I 15 should ask, would the impact on book sales 16 have been positive, that is more book sales? 17 A. Yes. 18 Q. If someone were -- I want to 19 change subjects on you for a minute. 20 If someone were to suggest at the 21 trial of this case that Dutton moved the 22 publication date in response to the Jeh 23 Johnson letter what would you say? 24 A. That is factually incorrect. 25 Q. Is it accurate to say that the</p>
<p>1 Sevier 2 fact that the paperback version was 3 published later than is normal, is that some 4 evidence of the fact that the hard copy was 5 still selling well? 6 A. Yes. 7 Q. There has been some discussion 8 today about a prepublication review and the 9 fact that that would have impacted and 10 perhaps delayed the publication date of the 11 book. And that that would have therefore 12 have impacted sales. I want to talk about 13 that subject generally with you. 14 If you accept that a 15 prepublication review would have delayed the 16 publication and had a negative impact on 17 sales let me ask you would Mr. Bissonnette 18 being able to promote the book unencumbered 19 have had a positive effect on book sales? 20 A. Yes. 21 Q. Would him be able -- him being 22 able to promote the paper book have had a 23 positive impact on paper book sales? 24 A. Yes. 25 Q. If it had occurred that movie</p>	<p>Page 242 1 Sevier 2 publication date was moved from the 11th of 3 September to the 4th of September before the 4 Jeh Johnson letter had even been received? 5 A. Yes. 6 Q. What were the reasons for the 7 change of the publication date? 8 A. The news story had broken two 9 weeks earlier than we expected. 10 As I testified earlier today the 11 exposure that we got from media, from the 12 book's media moment is the crucial part of a 13 book's sales life. 14 Q. Did it have anything to do with 15 Mr. Bissonnette's name being disclosed. Do 16 you recall if that was a factor at all? 17 A. I wouldn't say that was a factor 18 in the decision to change the publication 19 date. 20 Q. Okay. Was the change of the 21 publication date made known Mr. Podlaski in 22 advance of it being implemented? 23 A. Yes. 24 Q. Did he ever voice any opposition 25 to the publication date being changed from</p>

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	Page 245		Page 247
1	Sevier	1	Sevier
2	the 11th to the 4th?	2	separately.
3	A. No. Not that I remember.	3	Setting him aside do you know of
4	Q. Do you still have Exhibit 110 in	4	anyone who recommended to Mr. Bissonnette
5	front of you there, sir, that is the Dutton	5	that he not submit the book to a
6	contract?	6	prepublication review?
7	A. Yes.	7	A. I don't know of anyone other than
8	Q. You were asked some questions	8	Mr. Podlaski who gave him any advice on
9	about paragraph 4B which is on page numbered	9	that.
10	3 of the contract. Do you have that there	10	Q. Are you aware of whether
11	in front of you?	11	Mr. Podlaski affirmatively recommended that
12	A. Yes.	12	he not submit the book to a prepublication
13	Q. Let me just ask you, sir, is that	13	review?
14	language that was inserted for	14	A. Yes. That was what I was told by
15	Mr. Bissonnette or alternatively is that a	15	the author before the contract was even
16	part of the boilerplate of your contract?	16	signed.
17	MS. FOLEY: You are talking	17	Q. Did Mr. Bissonnette ever
18	about the whole paragraph?	18	misrepresent anything to you?
19	MR. JOHNSTON: The whole	19	A. No.
20	paragraph.	20	Q. As you sit here today do you have
21	THE WITNESS: Paragraph 4B is	21	an opinion as to his character and
22	part of our boilerplate. It is in	22	reputation for truthfulness and honesty and
23	every contract I think as far as I	23	veracity?
24	know.	24	MR. FURMAN: Objection.
25	BY MR. JOHNSTON:	25	THE WITNESS: Matt is one of the
1	Sevier	1	Sevier
2	Q. Specifically the language about,	2	most honest, straightforward straight
3	"If a failure to publish is caused by	3	shooters I have ever worked with.
4	restrictions by governmental agencies," is	4	BY MR. JOHNSTON:
5	that boilerplate that is in all of your	5	Q. Let me jump to this time frame of
6	contracts?	6	around August 31 of 2012. You were asked
7	A. Yes. To my knowledge it is.	7	whether you recommended or considered
8	Q. Did you ever hear that	8	submitting the book to a prepublication
9	Mr. Bissonnette had terminated Mr. Podlaski?	9	review at around that time and you indicated
10	A. If I did I don't remember it.	10	that -- well, I won't try to rephrase your
11	Q. Did you follow Mr. Podlaski's	11	answer.
12	advice on -- following his vetting of the	12	Let me just say during that period
13	manuscript of the book?	13	of time did you have discussions, e-mails
14	A. Yes.	14	and other communications with Mr. Podlaski?
15	Q. Did you consider that he did a	15	A. Yes.
16	good job with regard to that vetting and the	16	Q. Did he ever recommend a
17	references to the public record?	17	prepublication review before or after the
18	A. As far as I could tell, yes, he	18	receipt of the Jeh Johnson letter?
19	did.	19	A. No. He did not.
20	Q. Did you ever at any time suggest	20	Q. Can you tell me in at least in a
21	to Mr. Bissonnette that he should not submit	21	general way who would have had copies of the
22	the book to a prepublication review?	22	book on August 31, I don't mean every person
23	A. No.	23	by name but -- let me go through some
24	Q. Let me exclude Mr. Podlaski for	24	examples.
25	the moment. I will ask about him	25	Was the book sent out to reviewers

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	Page 249		Page 251
1	Sevier	1	Sevier
2	already or do you know?	2	point I would have because of the
3	A. Gosh, I don't remember.	3	identity issue but that ship won't set
4	Q. Would that be normal before a	4	sail thanks to Fox News.
5	publication review to have copies sent to	5	MS. FOLEY: So then you have
6	reviewers?	6	the royalty statements. You at least
7	A. Yes. Oh, I am sorry. Can you	7	will have them but we can collect
8	repeat the question?	8	those as well.
9	Q. Yes.	9	MR. JOHNSTON: I thought I had
10	Would it be normal to send copies	10	produced those to you because I
11	of the book to book reviewers before the	11	thought I asked for those from Elise
12	publication date?	12	already.
13	A. Yes.	13	MS. LEMKHEN: I don't think we
14	Q. This may be repetitious in which	14	have the universe of what is out
15	case I apologize if it is.	15	there. We have some of them.
16	MR. FURMAN: Objection.	16	MR. JOHNSTON: You sure should.
17	MR. JOHNSTON: Sustained.	17	If you tell me what you don't have, I
18	BY MR. JOHNSTON:	18	will work with you.
19	Q. Did Mr. Podlaski ever change his	19	MS. FOLEY: Okay. Then the
20	advice with regard to whether	20	last -- my last notes have to do with
21	Mr. Bissonnette was under an obligation to	21	Andy Dudley and whether or not he has
22	submit the book to a prepublication review?	22	any modeling for No Easy Day.
23	A. Not that I ever saw.	23	MR. FURMAN: Right. For future
24	MR. JOHNSTON: Pass the witness.	24	sales.
25	MR. FURMAN: Are you done?	25	MS. FOLEY: If there is any
1	Sevier	1	Sevier
2	MR. JOHNSTON: Yes, sir.	2	document that will show some kind of
3	MR. FURMAN: "Pass the witness"	3	modeling for future sales. That is on
4	is so Texas.	4	the record. I will call you -- I
5	MS. FOLEY: Mike, I want to just	5	understand the request. I will call
6	maybe on the record we can resolve --	6	you and let you know if there is
7	MR. FURMAN: On the record?	7	anything.
8	MS. FOLEY: Yes, on the record.	8	MR. FURMAN: The other item that
9	I wanted to potentially resolve with	9	I think if you can help me resolve it,
10	everyone in the room what additional	10	obviously Dick Heffernan is no longer
11	information you thought you needed.	11	at Dutton. If you have his last known
12	Can we do that?	12	address somewhere hopefully in a nice
13	I have taken notes I think you	13	warm place.
14	wanted the fully executed version of	14	(Continued on next page)
15	the contract?	15	
16	MR. FURMAN: Yes. Fully	16	
17	executed version of the contract.	17	
18	MS. FOLEY: Authentication	18	
19	affidavit.	19	
20	MR. FURMAN: Right.	20	
21	MS. FOLEY: And would that -- do	21	
22	you object to that?	22	
23	MR. JOHNSTON: No, not at all.	23	
24	MS. FOLEY: All right. So --	24	
25	MR. JOHNSTON: I mean at one	25	

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	Page 253	Page 255
1	Sevier	
2	MS. FOLEY: Or you want someone	
3	who can speak to communication.	
4	MR. FURMAN: With the sales	
5	force, yes.	
6	MS. HIROSE: He is in Scarsdale.	
7	MR. FURMAN: Thank you.	
8	(Time noted: 4:12 p.m.)	
9		
10		
11		
12	BENJAMIN PATRICK SEVIER	
13	Subscribed and sworn to	
14	before me this day	
15	of 2017.	
16	_____	
17		
18		
19		
20		
21		
22		
23		
24		
25		
	Page 254	Page 256
1	Sevier	
2	CERTIFICATE	
3	STATE OF NEW YORK)	
4	: Ss	
5	COUNTY OF NEW YORK)	
6	I, Steven Neil Cohen, a Registered	
7	Professional Reporter and Notary Public	
8	within and for the State of New York, do	
9	hereby certify: That BENJAMIN PATRICK	
10	SEVIER, the witness whose deposition is	
11	herein before set forth, was duly sworn by	
12	me and that such deposition is a true record	
13	of the testimony given by such witness.	
14	I further certify that I am not	
15	related to any of the parties to this action	
16	by blood or marriage and that I am in no way	
17	interested in the outcome of this matter.	
18	I further certify that neither the	
19	deponent nor a party requested a review of	
20	the transcript pursuant to Federal Rule of	
21	Civil Procedure 30(e) before the deposition	
22	was completed.	
23	In witness whereof, I have	
24	hereunto set my hand this 12 th day of	
25	January 2017.	
		
	STEVEN NEIL COHEN, RPR	

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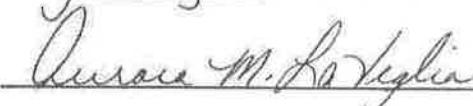
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1 Sevier
2 DEPOSITION ERRATA SHEET
3 Assignment No. J0498551
4 Case Caption: Matthew Bissonnette vs.
5 Kevin Podlaski and Carson
6 Boxberger, LLP
7 DECLARATION UNDER PENALTY OF PERJURY
8 I declare under PENALTY OF PERJURY
9 that I have read the entire transcript of
10 my Deposition taken in the captioned
11 matter or the same has been read to me,
12 and the same is true and accurate, save if
13 any, as indicated by me on the DEPOSITION
14 ERRATA SHEET hereof, with the
15 understanding that I offer these changes
16 as if still under oath.

17 

18 BENJAMIN PATRICK SEVIER

19 Subscribed and sworn to on the 27th day
20 of January, 2017 before me,

21 

22 Notary Public,
23 in and for the State of New York.

24 AURORA M. LaVEGLIA
Notary Public, State of New York
No. 24-4878599

25 Qualified in Rockland County
Commission Expires November 24, 2018

No changes.

*BSR*BENJAMIN SEVIER
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1	Sevier		
2	DEPOSITION ERRATA SHEET		
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23	Reason for change: _____		
24	SIGNATURE:	DATE:	
25	BENJAMIN PATRICK SEVIER		

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